Bridging the gap between the Juvenile Justice Act 2000 and Christian personal law — inheritance rights of adopted and illegitimate children in India

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The Indian Succession Act 1925 (ISA 1925) is based on common law principles and driven only by the principle of consanguinity; it does not provide for adoptive relationships or grant rights to illegitimate children thereby denying inheritance rights to both adopted and illegitimate children. The Juvenile Justice (Care and Protection of Children) Act 2000 (JJ Act 2000) was passed with the object of providing for proper care, protection and treatment of juveniles in conflict with the law and children in need of care and protection with the ultimate aim of their rehabilitation. Adoption, as one of many other modes of rehabilitation under the JJ Act 2000, and as affirmed by the Supreme Court in the Shabnam Hashmi case, reflect legislative and judicial support for making adoption a secular act and independent of the religion of the person adopting. Though the JJ Act 2000 grants the right to all Indian citizens, including Christians and Muslims, to adopt and confers the same rights as biological children have on the adopted child, it lacks clarity as to the application of succession law with respect to adopted children receiving inheritance rights in property. The question remains open as to the applicability of the ISA 1925 in respect of devolution of inheritance rights on children adopted by Christian parents under the JJ Act 2000 particularly when ISA 1925, which regulates the Christian law of succession, denies inheritance rights to an adopted child.

Introduction

During the early twentieth century, inheritance law shifted its focus from the dynastic family to the nuclear family, resulting in prioritisation of close kinship relationships over more distant ones. Intestate succession was established under common law on the principle of kinship or consanguinity and courts regard consanguinity as so fundamental in the statutes of descent and distribution that it cannot be ignored unless a statute, by express language or inexorable implication, so directs. Christian law of intestate succession in India is regulated by the Indian Succession Act 1925 (ISA 1925) and was passed during British rule. The law is steered only by the principle of consanguinity. However, under the JJ Act 2000, adoption is one of the modes of rehabilitation and is legally supported by the Supreme Court in the Shabnam Hashmi case.

The ISA 1925, which regulates the Christian law of succession, denies inheritance rights to an adopted child. The JJ Act 2000, on the other hand, grants all Indian citizens, including Christians and Muslims, the right to adopt and confers the same rights as biological children have on the adopted child. However, there is a lack of clarity as to the application of succession law with respect to adopted children receiving inheritance rights in property.

The question remains open as to the applicability of the ISA 1925 in respect of devolution of inheritance rights on children adopted by Christian parents under the JJ Act 2000, particularly when ISA 1925, which regulates the Christian law of succession, denies inheritance rights to an adopted child.
consanguinity and denies inheritance rights to an adopted child. Christian law attaching sacrosanctity to marriage recognises inheritance rights to children born only from a valid marriage, thereby granting no protection with respect to shares being reserved for illegitimate children. Denial of inheritance rights to adopted and illegitimate children causes social and economic deprivation. Inheritance practices among Christians disallowing such rights to adopted or illegitimate children of deceased have profound negative impacts on them. Every child has a right to love and be loved, to grow up in an atmosphere of love and affection and of moral and material security. The transfer of physical assets from the parent to the child can provide the start-up material for the younger generation’s more independent future, livelihood and economic productivity. However, exclusion from asset inheritance can exacerbate vulnerability to chronic poverty and the intergenerational transmission of poverty.

India is comprised of people belonging to different religious, cultural and social groups, which have great diversity in their personal laws, particularly in matters related to succession. Religion determines the law relating to marriage, divorce, maintenance, adoption, guardianship and even inheritance. Before Independence, the Second Law Commission pointed out that personal law, being religious in nature, should not be interfered with. After Independence, the Indian Constitution has not dealt with the problem of separate personal laws, though the legislature has enacted separate laws applicable only to Hindus in matters of marriage, divorce, adoption, guardianship, maintenance and succession. Adopted children under Hindu law enjoy the same rights, including inheritance, as natural born children, whereas the rights of illegitimate children are limited to maintenance. Muslims are ruled by their uncoded personal laws in all matters, even for succession. Muslim law does not permit for adoption or the granting of rights to illegitimate children. Marriage and divorce of Christians and Parsis are statutorily regulated by different enactments, but intestate succession of both is governed by the ISA 1925. Married persons, or those having their marriage registered under the Special Marriage Act 1954 (SMA, 1964), also come under the purview of the ISA 1925 in the matter of succession. The principle of consanguinity, ie, blood relationship, forms the fundamental basis for devolution of property under the ISA 1925 therefore the inheritance rights of adopted and illegitimate children do not find a place under these laws.

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5 Under the provisions of the Charter Act 1853, a Law Commission was appointed in England on 29 November 1853.
In the absence of any statutory code enabling adoption for non-Hindus, ie, Christians, Muslims and others, one could only avail oneself of the benefit of becoming a guardian by order of the court under the Guardians and Wards Act 1890 (GWA 1890). This Act indirectly fills the void by giving the guardian the right to custody of a minor and to treat him or her as their own child in the absence of any secular code regulating adoption in India. But it does not make the guardian the parent of the ward. Continuation of guardianship of an individual depends on the discretion of the court and ends when the ward attains majority. Unlike children, who are liable to maintain their parents, after attaining majority a ward has no such liability. Further, on either of them dying intestate, neither the guardian nor the ward has any inheritance right in the property of the other, as is enjoyed between a child and his or her parent(s). The only alternative left for a guardian to transfer his or her property for the benefit of his/her ward, is by way of gift or will, as is the case with legal strangers. Failure of a guardian to make a bequest in favour of the ward results in devolution of property, which means the property passes only to the guardian’s heirs which excludes the ward.

Thus, GWA 1890 grants custody but does not establish any inheritance right in the ward. The fundamental principle of relationship by blood in matters of inheritance still rules different personal laws thereby denying inheritance rights to the ward, adopted and illegitimate children. A right of maintenance is guaranteed to both adopted and illegitimate children during their minority under the secular code, ie, Code of Criminal Procedure 1973 (CrPC 1973). While the secular code guarantees maintenance rights, it does not extend further to guarantee inheritance right to such children. In dealing with personal laws, greater community participation is required to make a concerted effort to encourage the legislature to change and improve laws and bring them in tune with modern thinking and consonant with human dignity. This article intends to examine the void left in the statutory law of inheritance pertaining to the rights of adopted and illegitimate children under Christian law; examines the legislative and judicial developments with respect to the granting of rights to such children and suggests reforms in inheritance laws to bring change in family structure.

Inheritance rights of adopted and illegitimate children under Hindu and Muslim Law

Devolution of property on the principle of kinship is not strictly adhered to under Hindu law, thus property devolves beyond kinship. Apart from natural born children, inheritance rights are conferred also on adopted children and children born from void and voidable marriages. Adoption among Hindus (including Sikhs, Buddhists and Jains) is regulated by the Hindu Adoption and Maintenance Act 1956 (HAMA 1956) which grants rights to both male and female Hindus to adopt. The Hindu Succession Act 1956 (HSA 1956) was passed to govern intestate succession of Hindus. An adopted child under Hindu law is considered to be the child of the adoptive mother/father, like any

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6 Hindu Adoption and Maintenance Act 1956 s 12.
other natural child for all purposes including succession of property under HSA 1956. But Hindu law grants validity only to those adoptions where the child to be given up for adoption is an unmarried Hindu child younger than 15 years who has not been adopted before. An adoptive father or mother can adopt a male child or female child only in the absence of a son, grandson or great-grandson, or in the absence of a daughter or son’s daughter, respectively, living at the time of adoption. The minimum age difference of the adoptive father or mother ought to be 21 years for adoption of children of the opposite sex. HAMA 1956 does not require any ceremony to be undergone for adoption but rather requires actual giving and taking in adoption with the intent to transfer. Fulfilment of these conditions validates adoption thereby entitling the adopted child to the same inheritance rights as is accorded to natural children.

Adopted children and children born to Hindu parents from a valid marriage have rights both in coparcenary and separate property. A child born of a void or voidable marriage under the Hindu Marriage Act 1955, termed a ‘statutory legitimate’ child, is conferred limited legitimacy only to the extent of receiving rights in the separate property of his or her parent(s) and none else. Further, his or her right is restricted to the parents’ separate property with no share in coparcenary property. On the other hand, illegitimate children, ie, children not born out of a valid, void or voidable marriage between Hindu parents, cannot claim a share either in coparcenary or separate property of the father. Illegitimate children only have a right in the separate property of the mother, and maintenance from the father. Thus, compassion along with discrimination exist under Hindu law for illegitimate children.

Adoption is not recognised under Muslim personal law; consequently no inheritance right is conferred on the adopted child. An illegitimate child under Sunni law is deemed to be related to its mother and inherits from her and her relations but does not inherit from the father or any of his relations. Under Shia law, children born outside lawful marriage are regarded as neither related to the father nor to the mother, thus, are filius nullius, ie, son of nobody, therefore they are not entitled to inherit.

The devolution of property of persons belonging to different religions married or registered under SMA 1954 is regulated by ISA 1925 and a child born out of a void or voidable marriage under SMA 1954 is deemed to be a legitimate child and is entitled to inherit in the same way as any other legitimate child.

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7 Hindu Marriage Act 1955 s 16.
8 Under classical Hindu law, only male members can become coparceners who have right by birth in the coparcenary property. Coparcenary property or ancestral property under classical Hindu law means property that one has inherited from one’s father, grandfather or great-grandfather in which his son, grandson, great-grandson had right by birth. On death of the coparcener, his share in coparcenary property passed by rule of survivorship to other surviving coparceners. Daughters under the Hindu Succession (Amendment) Act 2005 have now been conferred coparcenary rights.
9 Hindu Marriage Act 1955 s 16.
10 Jini Keotin and Ors v Kumar Sitaram Manjhi and Ors (2003) 1 SCC 730; Bharatha Mutha and Anr v Vijaya Renganathan and Ors AIR 2010 SC 2685.
11 Hindu Succession Act 1956 s 3(j).
Adoption as means of rehabilitation under the
Juvenile Justice (Care and Protection of Children) Act
2000

While legislative change reflects societal change it is a slow process. Adoption is a practical reality and a small step has been taken by the legislature to recognise adoption in India, regardless of one’s religion. Rather than entering into the domain of personal laws recognising adoption, India has enacted the Juvenile Justice (Care and Protection of Children) Amendment Act 2006, under the Juvenile Justice (Care and Protection of Children) Act 2000 (JJ Act 2000). The Amendment Act 2006 for the first time provides ‘adoption’ as one of the many means to rehabilitate and socially reintegrate children in conflict with the law and children in need of care and protection. The JJ Act 2000 defines adoption as ‘the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all rights, privileges and responsibilities that are attached to the relationship’. Under the JJ Act 2000 (as amended in 2006), when read with the Juvenile Justice (Care and Protection of Children) Rules 2007, the responsibility in relation to adoption has been vested wholly in the court. The State Government is authorised to make rules to give effect to these provisions.13 Any Indian citizen, irrespective of the sex and number of children, can now adopt a child. Adoption has been delinked from the religion of adoptive parent(s),14 in keeping with the best interests of the child concept.

13 In Re Arjun Neelakantan 2014-5-LW513; High Court of Madras, OP No 335 of 2014, 22 September 2014.
14 Section 40 of JJ Act 2000:

Process of rehabilitation and social reintegration:
The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children’s home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organization.

Section 41 of JJ Act 2000:

Adoption:

(1) The primary responsibility for providing care and protection to children shall be that of his family.
(2) Adoption shall be resorted to for the rehabilitation of such children as are orphaned, abandoned, neglected and abused through institutional and non-institutional methods.
(3) In keeping with the provisions of the various guidelines for adoption issued from time to time by the State Government, the Board shall be empowered to give children in adoption and carry out such investigations as are required for giving children in adoption in accordance with the guidelines issued by the State Government from time to time in this regard.
(4) The children’s homes or the State Government run institutions for orphans shall be recognized as adoption agencies both for scrutiny and placement of such children for adoption in accordance with the guidelines issued under Sub-section (3).
(5) No child shall be offered for adoption —
    (a) until two members of the Committee declare the child legally free for placement in the case of abandoned children,
    (b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and
    (c) without his consent in the case of a child who can understand and express his consent.
The Amendment Act 2006 was passed with the object of consolidating the law relating to juveniles and providing for their adoption as one of several ways of legally rehabilitating children, attempting to compensate for the gap in relation to adoption arising under different personal laws. The new legislation, by providing the impetus for adoption and expanding its availability, gives relief to the child in need of care and protection; however, it is not without inconsistencies and limitations. First, it applies only when the child sought to be adopted falls within the description of an orphaned, abandoned or surrendered child or is a child in need of care and protection. Second, a board is to be constituted by the State Government to facilitate the adoption. Where the State Government has not set up a board, a child in that state cannot be given in adoption under JJ Act 2000. Third, it lays down adoption as one mode of rehabilitation but does not provide remedies for when adoption is prohibited under the personal law of the adoptive parent. While the legislation creates rights of adoption, it does not account for problems associated with its implementation. Though the new legislation was framed with good intent, it has paved the way for doubts with regards to implementation, as it remains silent regarding the effects of adoption as mentioned in HAMA 1956. The JJ Act 2000 ought to make clear that an adopted child should be deemed to be a child of his or her adoptive parent(s) for all purposes, including: their rights in the property of the adoptive parent(s); their rights in property which vested in them before adoption and their liabilities; their right to claim maintenance from adoptive parent(s) after adoption; and, to not divest any person of their property which vested in that person before their adoption.

The JJ Act 2000 needs to be made more comprehensive and detailed as regards its application, the rights of the adoptive parents and the adoptee child and the consequences of adoption. A new bill Juvenile Justice (Care and Protection of Children) Bill 2014\(^1\) has recently been introduced in Lok Sabha\(^2\) to replace the Juvenile Justice (Care and Protection of Children) Act 2000. In addition to other major changes, this Bill expressly grants inheritance rights to the adopted child, who, after adoption, becomes the child of adoptive parents for all purposes. The Bill makes adoption a secular act by explicitly making the religion of the person immaterial when adopting a child. At the same time it excludes it from the operation of HAMA 1956. A Parliamentary Standing Committee which has submitted a report on the Bill\(^3\) has observed that at present there is no general adoption law in India and the Central

\(^{(6)}\) The Board may allow a child to be given in adoption —

(a) to a single parent, and

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters.

\(^{15}\) Bill No 99 of 2014.

\(^{16}\) Lower House of Parliament of India.

Adoption Resource Authority (CARA), which is expected to function as a regulatory authority, has not been able to discharge its mandate effectively. The Committee found that the emphasis of the proposed legislation is on non-institutional care of children by strengthening the status and role of CARA which is envisaged to be an apex body for adoption. CARA is mandated to monitor and regulate in-country and inter-country adoptions through various modes. The Committee welcomed this initiative and hoped that this would lead to streamlining the adoption procedure and removing the present complexities involved therein. The progression of recognising the need and granting the right to adopt such a child, rather than restricting the right under the personal law, is evidence that rules of personal law based on religion may be reformed in order to bring them into conformity with social and legal change.

Inheritance rights of adopted children under Indian Christian law

After Independence, matters relating to the manner and method of adoption, the rights and obligations of the adoptive parents and of the adopted child, are all to be governed by statute made by the Indian legislature. The legislature is yet to take a positive step in this direction. Although adoption is not statutorily recognised under Christian law in India, the law of Church or the Canon law of Christians does not prohibit adoption. Canon 110 of the Code of Canon Law commissioned by the Canon Law Society of America speaks of the legal consequences of an adoption made in ‘accordance with the civil law’.  

18 Decree XXI of the ‘Acts and Decrees of the Synod of Diamper 1599’ provides that adoption of sons is illegal except in default of children which by implication suggests that in default of children, adoption could be legal thus adoption is legal in certain situations. Decree XXII which forbids the Bishop from sanctioning those adoptions which are illegal under Decree XXI also provides how an adoption is to be perfected.  

So, even though customary law


Canon — 110 — Children who have been adopted in accordance with the civil law are considered as being the children of that person who has adopted them. 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 — 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.

19 DECREE XXI - ADOPTION OF SONS ILLEGAL EXCEPT IN DEFAULT OF CHILDREN

The Adoption of Sons is not lawful, but in defect of natural children; which not being understood by the Christians of this bishopric through their ignorance of the law, they do commonly adopt the children of their slaves born in their houses or of other people, disinheriting their lawfully begotten children, sometimes upon the account of some differences they have had with them, and sometimes only for the affection they have to
of Christians partially recognises adoption, in the absence of its statutory recognition among Christians, partial recognition under custom is inadequate for a Christian wishing to adopt.

**Legislative developments as regards adoption under Indian Christian law**

Adoption under Christian law is not recognised under any of the legislative enactments, be it the Christian Marriage Act 1872, Divorce Act 1869 (DA 1869) or ISA 1925. Devolution of property among Christians in India is regulated by ISA 1925 which recognises the relationship only by consanguinity, i.e., blood, hence adopted children have no right in property as heir. The property of an intestate devolves upon those who are kindred of the deceased, and kindred have been defined as a relation of the person descended from the stock or common ancestor. Following the principle of consanguinity, the surviving child, in the absence of any other lineal descendant, inherits the entire estate leaving no room for the inheritance rights of adopted children. However, for testamentary succession Sch III of ISA 1925: strangers, all which is contrary to law and reason, and is a manifest injustice and wrong done to their legitimate children; wherefore the Synod doth declare, that the said adoptions must not be practised where there are natural children, and being done are void, so that the persons thus adopted are not capable of inheriting anything, except what may be left them by way of legacy, which must not exceed the third of the estate; no, not though the adoption was made before there were any legitimate children to inherit. The Synod doth furthermore declare, That the adoptions which have been made before the celebration of this Synod, where there are children, and the adopted are not in actual possession of the estate, are void, neither shall the adopted have any share thereof, or having had any, shall be obliged to restore it, to which if it be found necessary, the prelate shall compel them by penalties and censures; but as to those who by virtue of such adoptions, have for a long time been in quiet possession of estates, the Synod by this decree does not intend to dispossess them thereof, by reason of the great disturbance and confusion the doing so would make in this diocese, which is what this Synod pretends to hinder, leaving everyone however in such cases, at liberty to take their remedy at law.

**DECREE XXII - FORBIDS THE BISHOP TO SANCTION SUCH ADOPTION**

Whereas the way of adopting by ancient custom in this diocese, is to carry the parties that are to be adopted before the bishop or prelate, with certain testimonials, before whom they declare, that they take such a one for their son, whereupon the bishop passeth an Olla or certificate, and so the adoption is perfected; the Synod doth command, that from henceforward, the prelate do not accept of an adoption from any that have children of their own; or in case they have none, yet it shall be declared in the Olla. That if they shall afterwards happen to have any, that the said Olla shall be void to all intents and purposes; by which means the great injustices that are now so common in this diocese will be prevented.

20 Section 32 of ISA 1925:

Devolution of such property

The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter.

21 Section 24 of ISA 1925:

Kindred or consanguinity

Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

22 Section 37 of ISA 1925:

Where intestate has left child or children only
1925 grants rights to adopted children of the deceased, their grand children related through adoption and the wife of his adopted son; they are considered to be on par with natural born relations, with similar succession rights but such rights have been given only in specific situations. After the inception of ISA 1925, judicial interpretation did not favour including adopted children within the meaning of 'child' under the Act.\(^{23}\)

As the institution of adoption did not exist in England before the twentieth century and was not prevalent among the Christians in India, the Act of 1925 passed by the British for India did not provide for adoptive relationships.\(^{24}\) By the passing of ISA 1925, the common law principles followed in England applied as the personal law under the ISA 1925 affected mostly Christians as they constituted the majority of the population to be governed by ISA 1925. Under common law, the transfer of parental rights and duties in respect of a child by another person was unknown. However in equity it was possible for a relative or a stranger to put himself in loco parentis towards a child by undertaking the office and duty of a father, to make provision for the child so as to assume a fiduciary position in respect of the relationship with the child; but this did not create any legal relationship nor grant legal status.\(^{25}\)

In 1926, after passage of the ISA in 1925 in India, the law relating to adoption changed in England and adoption was introduced by the Adoption of Children Act 1926, which was later replaced by the Adoption of Children Act 1958, and, most recently, by the Adoption Act 1976 (which was enacted in conformity with the provisions of the European Convention on the Adoption of Children). The English Adoption Act 1976 contains provisions relating to the recognition of adoption and conferral of certain status on the adopted child and provides for devolution of property. The concept of adoption under English Law has undergone a sea change as a result of legislative enactments. Accordingly, 'legal adoption', as distinguished from 'de-facto adoption' or 'fostering' of children in England, as elsewhere in the world, now insists upon consideration of the welfare of the child and consequently reflects conceptual changes as to socio-religious, social-political ethos and philosophies of life.\(^{26}\)

So, adoption is no longer unknown to English law, but while the law relating to adoption was amended in England the statutory law introduced by the British in India based on common law principles still remains. Later amendments to the English statutory provisions with regard to adoption could not retrospectively be applied to the legislative law passed in India, therefore Christians in India are left with no legal sanction for a valid adoption and the rules under the ISA 1925 still continue after Independence.

To regulate adoption in Indian communities where adoption is not provided

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Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children.

23 Ma Kkin Than v Ahma AIR 1934 Rang 72; Ranbir Karam Singh v Joginder Chaudra Bhattacharji ILR (1940) All 100.


26 Datt v Walters (dec’d) (through LR)s AIR 2001 All 109.
for, a Bill was first introduced into Parliament in 1955, however this was withdrawn to ensure smooth passage of the Hindu Adoption and Maintenance Bill. Later, in response to growing demand for a general law for adoption to provide proper homes for destitute and abandoned children, two more Bills were introduced in 1967 and 1970, but both Bills lapsed. Cognizant of the void in secular law relating to adoption in India, the Central Government in Rajya Sabha\(^\text{27}\) introduced the Adoption of Children Bill 1972 to make uniform the law of adoption for all communities. The Bill was intended to enable all those domiciled in India to adopt children by means of an order by the District Court, wherein the adopted child was to be considered the child of the adopter for all purposes including intestacy. The Bill failed as it was vehemently opposed by the Muslim clerics who considered adoption to be against the tenets of Islam. Later, the Adoption of Children Bill 1980 was introduced in Lok Sabha\(^\text{28}\) under which the welfare of the child was the main consideration. The Bill gave unmarried women the right to adopt a child, equal rights to a married woman with her husband to adopt a child jointly and required the consent of both parents; but the Bill also lapsed. In 1990, the Christian Adoption and Maintenance Bill 1990 was mooted by Christian Organizations for Christians but that has also failed to become a law. In 1999 during the XIIIth Lok Sabha Debate,\(^\text{29}\) a Member of Parliament, Dr Beatrix D’Souza, brought to the attention of the government the need to reform and update Christian personal law pertaining to a few specific Bills, ie, the Christian Marriage Bill 1997, the Christian Divorce Bill 1997, the Christian Succession (Amendment) Bill, 1994 and the Christian Adoption and Maintenance Bill 1997. D’Souza argued the reforms were necessary as these Acts did not meet the requirements of modern social realities and she requested the government introduce these Bills to grant justice to the minority Christian community. The government, however, has maintained silence.

The right of Christians to adopt may have been restricted under their personal statutory law, in the absence of secular adoption law, but they can avail themselves of the opportunity to adopt by an alternative course under the JJ Act 2000. As adoption is not endorsed statutorily under Christian law, no provision is made for devolution of property to one’s children unrelated by blood under ISA 1925. Christian parents have recourse to the JJ Act 2000 but, under the ISA 1925, the inheritance right of any resultant adopted child to the property of his or her parents, which strictly follows the rule of consanguinity in devolution of property, remains indeterminate. Uncertainty persist as to an adopted child’s inheritance rights under the Act of 1925, though recent judicial activism has seen Indian citizens and children, irrespective of his or her religion, being granted rights to adopt and rights to be adopted with incidental rights, respectively.

\(^{27}\) Upper House of Parliament of India.

\(^{28}\) Lower House of Parliament of India.

Judicial developments as regards adoption under Indian Christian law

The Supreme Court of India has expanded the scope of one’s right to adopt but is yet to give a definite ruling on the rights of Christians to adopt. Contradicting judgments of various High Courts have explored the rights of Christians to adopt by delving into Canon Law or the customary law of adoption, or by giving an expansive meaning to the right to life of the adoptive child or adoptive parents. On the subject of adoption, the Supreme Court, in its landmark judgment Lakshmi Kant Pandey v Union of India,\(^30\) has accepted the right of a child to include the right to a home, a name and a family as a part of his or her right to life.

Although Lakshmi Kant does not deal with adoption rights for Christians in India, it is a breakthrough case relating to adoption of Indian children by persons outside India. In the absence of legislation to regulate inter-country adoption, the Supreme Court, relying on existing constitutional safeguards, international Conventions and the Guardians and W ards Act 1890, laid down elaborate principles governing inter-country adoption. The court emphasised that every child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. If for any reason it is not possible for the biological parents or other near relative to look after the child or the child is abandoned and it is either not possible to trace the parents or the parents are not willing to take care of the child, the next best alternative would be to find adoptive parents for the child so that the child can grow up under the loving care and attention of the adoptive parents. It further went on to hold that if it is not possible to find suitable adoptive parents for the child within the country, it may become necessary to give the child in adoption to foreign parents rather than allow the child to grow up in an orphanage or an institution where it will have no family life and no love and affection of parents and quite often, in the socio-economic conditions prevailing in the country, it might have to lead the life of a destitute; half-clad, half-hungry and suffering from mal-nutrition and illness. While accepting that there is no law to regulate inter-country adoptions, the judgment emphasised the need for efforts to be made to first rehabilitate the child by adoption within the country and then by inter-country adoption. Aware of the trafficking of children by ill-equipped and undesirable organisations or individuals, it laid down broad guidelines to be adhered to by foreigners wishing to adopt a child from India. Safeguards for biological parents were also formulated and directions were issued for the setting up of an adoption resource agency by the government of India. The court acted on a public interest letter complaining of malpractices by social organisations and voluntary agencies engaged in offering Indian children for adoption to foreign parents, and therefore emphasis was placed on the guidelines relevant to inter-country adoption. Directions were issued in recognition of the child’s right to love and be loved and grow in a congenial environment.

While the Supreme Court recognised a child’s right to love and be loved, it

\(^{30}\) AIR 1984 SC 469.
focused its attention on laying down guidelines for inter-country adoption, rather than the consequences of in-country adoption. In the interests of the child, and also for society, the court clearly leans in favour of adoption with certain restrictions. The court also emphasised the need to give the adopted child legal status with the same right of inheritance as a natural born child. The Apex Court judgment in *Lakshmi Kant* is the highwater mark in the development of the rights of the child as it candidly questioned the operation of adoption within India when the same child could be given to foreign adoptive parents irrespective of their religion.

At times the High Courts have taken proactive steps with regard to recognising rights under Christian law to adopt a child. The question regarding the rights of Christian Indians to adopt a child came up for consideration for the first time before the Kerala High Court in *Philips Alfred Malvin v YJ Gonsalves*, where the single judge bench held Christian law does not recognise adoption but at the same time accepted that neither Christian law nor Canon Law prohibit adoption. Accepting the philosophy of adoption under Hindu law, it observed that in addition to religious motives, secular motives were also important such as man’s desire for celebration of his name for the perpetuation of his lineage, for providing security in old age and for dying in satisfaction that one has left an heir to one’s property. The right of the couple to adopt a son is a Constitutional right guaranteed under Art 21 of the Constitution. The right to life includes those things which make life meaningful, therefore the position of an adopted child in respect of inheritance and maintenance is the same as that of a natural born child. Reiterating the provisions of Canon Law, it held that, simply because there is no separate statute providing adoption for Christians, it cannot be said that adoption by a Christian couple is invalid. The adopted child receives all the rights of a natural born child, so is entitled to inherit the assets of the Christian couple. This view has been approved by the Division Bench of the same High Court in *Maxin George v Indian Oil Corporation*. However, another judge of the Kerala High Court, in *Biju Ramesh v JP Vijayakumar*, distinguished the decision of *Malvin* on its facts and held that there must be a civil law providing for adoption and that the fact of adoption must be proved before the court.

Recognition of the right of adoption under Christian law was also an issue before the Bombay High Court in *Manuel Theodore D’souza*. Considering the larger question of 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, Justice Rebello ruled that the right of a child cannot be confused with the personal law of any section of India’s pluralistic society. He went further to say that adoption is not to be treated as an act by a state to force a child on unwilling parents; on the contrary, it is a voluntary act on the part of eligible persons to...

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31 1999 (1) KLJ247; AIR 1999 Ker 187.
32 2005 (3) KLT 57.
33 AIR 2005 KER 196.
34 II (2000) DMC 292.
provide comfort, love and security to abandoned and homeless children and no religion can deny family love to these children of God. Justice Rebello did not stop there. He provided a Constitutional basis for the courts to evolve a solution to the issue of adoption with the following words:

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. Personal law have to meet the test of Part III of the Constitution, if they are to be saved. On coming into force of the Constitution it is Article 21 in which the rights of a child are cradled. Custom has given way to Article 21. The right of adoption after coming into force of the Constitution is not referable to any customary or personal right. It is now impregnated in Article 21. Its flow now is sustained from the Republican Constitution and not age-old Customs.

Acknowledging the rights under Christian law to adopt and be adopted as fundamental rights under Art 21 of the Constitution, the Bombay High Court citing *Lakshmi Kant* has held that the right of the child to be adopted and, consequently to have a home, a name and a nationality, has to be considered as part of the child’s right to life.

On the issue whether the adopted child of an Indian Christian of Hindu origin is entitled to succeed to the estate of their adoptive parent dying intestate, divergent views have been expressed by G P Mathur J and S R Singh J of the Allahabad High Court in *Ajit Datt*. Mathur J was not in favour of granting inheritance rights to adopted children on the ground that there was no custom among Indian Christians that allowed adoption. Justice Mathur further held that:

a person who ceases to be a Hindu in religion and becomes a Christian cannot elect to be bound by the Hindu law in the matter of succession after the passing of the Indian Succession Act, and a Hindu convert to Christianity is governed solely by the said Act. Where a son was adopted by Indian Christians of Hindu origin, the adopted son cannot claim as a matter of right to inherit the property of his adoptive parents in absence of any statutory provision. In order to obviate the problem being faced by childless couple or by abandoned, orphaned or destitute children whom persons are willing to adopt a comprehensive legislation should be made.

On the other hand, Singh J expressed the conflicting view that for Christians, professing any form of Christianity, adoption is purely a secular concept and phenomenal event. The desire for celebration of one’s name, for perpetuation of one’s lineage, for providing security in old age, and for dying in satisfaction of leaving behind an heir to succeed to one’s estate, constitute secular motives for adoption and such motives would be sufficient and provide valid grounds to give legal recognition to adoption among Indian Christians of Hindu origin professing any form of Christianity. He further opined that:

even in the absence of statutory or customary rights of adoption, a sonless person, may adopt a child in exercise of his personal right to life as a means of fulfilment of his happiness and as such, adoption must be recognised by Courts if it is not interdicted by any legislation, established custom, or personal law. There is nothing in the philosophy and ethics of Christianity which might be construed as prohibiting adoption and what is not expressly or impliedly prohibited by Legislature or any

35 Above n 26.
The tenet of Christianity shall be deemed to be permitted by law and must be accorded recognition by Courts. The word ‘son’ in the case of any one whose ‘personal law’ permits adoption, shall include an ‘adopted son’ as provided in s 3(57) of the General Clauses Act. In any case adoption being a facet of right to life, if established, will make the adopted child as a child born in the wedlock of adoptive parents. Adopted son of an Indian Christian of Hindu origin will come within the purview of ‘lineal descendant’ or lineal consanguinity and shall be entitled, under s 37 of the Indian Succession Act, 1925 to inherit the properties of his adoptive parents dying intestate.

The Karnataka High Court in Vasanti v Pharez John Abraham, while completely endorsing the view of the Kerala High Court in Malvin and the view of Singh J in Ajit Datt, held that an adopted child under Christian law has the right of inheritance. Unlike Hindu law, there is no law prohibiting a Christian couple from adopting a male and/or a female child when they already have natural born male and/or female children. Further, the court was of the view that adoption according to Christians is based on both temporal and spiritual values. Recently, the same High Court in Joyce Pushpalalitha Karkada v Mrs Shameela Nina, while approving Vasanti, categorically held that proving of formalities necessary for a valid adoption was not relevant when it was admitted that the adoptee had been treated as the adopter’s child from the time of his baptism till his death.

Contrary opinion has been expressed by the Madras High Court in Rabi v Jesu Leela, wherein the court rejected the claim of inheritance rights of the Christian adopted child (the appellant) Balakrishnan CJ held the appellant could not inherit the estate of the deceased as he was an adopted son and under the ISA 1925 an adopted son is not treated on par with a natural son and will not inherit the property of the parents by intestate succession. For Hindus under the HSA 1956, an adopted son is treated as a natural son for the purposes of succession of ancestral property. The appellant had only pleaded that he had been treated as the son of the deceased but did not make a specific plea in the written statement that in the community to which they belonged, there was a custom of adoption. It was observed that as there was no personal law governing the adoption, it could only be held that the appellant did not have the right to inherit the property of the deceased. While distinguishing Lakshmi Kant, the court held that it was a case where the Supreme Court laid down certain guidelines in the matter of inter-country adoptions. In 2011 the Kerela High Court in Philips Alfred Malvin v YJ Gonsalvis, held that when adoption is not recognised by personal law applicable to parties, it is not valid unless it is sanctioned by civil law.

The decisions of the Bombay, Kerala and Allahabad High Court were delivered before Parliament amended the JJ Act 2000, through the Juvenile Justice (Care & Protection of Children Amendment) Act 2006. The interpretation of the provisions of the JJ Act 2000, as amended in 2006, and HAMA 1956 came before the Bombay High Court in 2010. The Hindu

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36 ILR 2007 Kar 2375.
37 Karnataka High Court, Regular First Appeal No 849 OF 2010, 12 September 2013.
39 2011(2) KLIJ 48.
40 In Re Adoption of Payal @ Pathak and his wife Sahay @ Pathak 2010(1) BomCR 434.
petitioners, already having a girl child, had obtained guardianship rights with respect to another female baby when she was just 5 months old. Several years later, the petitioners filed an application to legally adopt that child under the JJ Act 2000. HAMA 1956 bars a person having a child to adopt another child of the same sex. The court accepted that the JJ Act 2000 creates an exception with respect to abandoned children. The petitioners were declared to be the adoptive parents with all the rights and consequences that entails under law. The result was that the JJ Act 2000 prevailed over the personal law of the party and gave them the right to adopt a same sex child which was prohibited under their personal law. Adoption of orphaned, abandoned and surrendered children should be encouraged as it is a way to provide them with love, affection and care by the adoptive family and the restriction of number/gender should be ignored in the case where the adoptive parents are able to satisfy the courts that they are capable financially and emotionally of taking care of the adoptive child/ren.41

The issue of adoption by Christian parents under the JJ Act 2000 came before the Madras High Court in *Re Christopher and Chandra*.42 The petitioners had filed the application for a direction that the minor child, whom they had adopted as per Christian rites and customs under Canon Law and had also been declared by the court to be her legal guardian, was entitled to all legal rights including the right of inheritance as if she were a biological child. The court, while allowing the application, held that the preamble to the JJ Act 2000 and the Act itself was enacted with a view to fulfilling India’s international obligations as well as the Constitutional goal envisaged in Pt IV of the Constitution. Therefore, aspiring parents, who intend to adopt children, without being inhibited by their personal laws, are entitled to adopt a child in terms of the provisions of the JJ Act 2000. The view expressed in *Christopher* was endorsed by the Madurai Branch of the same High Court in *Maria (a minor, rep by her father and Guardian Mohandas) v Accountant General Chennai*.43

Recently, a writ petition has been filed in the Supreme Court in *Shabnam Hashmi v Union of India (UOI)*44 to elevate the right to adopt and to be adopted to the status of a fundamental right under Part III of the Constitution. The writ petition also requested the court lay down optional guidelines enabling the adoption of children by persons irrespective of religion, caste, creed etc. The court held that adoption under the legislation by prospective parents is optional. It does not contain an unavoidable imperative and cannot be stultified by principles of personal law which will continue to govern any person who chooses to so submit themself to those personal laws. Such is the situation until such time as a Uniform Civil Code is achieved. With respect to raising the right to adopt to the status of a fundamental right, the court applied judicial restraint by holding that it was not presently an appropriate time or stage for the right to adopt and the right to be adopted to be raised to the status of fundamental rights and/or to understand such rights to be encompassed by

41 Mittal v Nari Niketan Trust (regd) Nakodar Road, Jalandhar 2012 (4) RCR (Civil) 541.
42 2009 (8) MLJ 309.
44 2014 (2) SCALE 529.
Art 21 of the Constitution. The court refused to recognise the right to adopt to be an integral part of Art 21, which guarantees the rights to life and liberty, on the ground that there are conflicting views and beliefs prevailing in the country which have hindered the goal of achieving a Uniform Civil Code under Art 44. But the Bench observed that persons of any faith can adopt a child under the JJ Act 2000 and this law will prevail until a Uniform Civil Code is achieved. Rajan Gogai J held that personal beliefs and faiths, though they must be honoured, cannot dictate the operation of the provisions of an enabling statute which grants superior status to enactments over personal beliefs. The court thus indirectly acknowledged that, if adoption rights have been granted statutorily to an individual, who is guided by their personal faith which condemns adoption, the statute has preference over their personal belief. By implication, the JJ Act 2000 enables Christians and Muslims to adopt. But the court did not consider the rights of adopted children and the consequences of adoption. The question of devolution of property under the ISA 1925 to adopted children who have been adopted by Christian parent(s) under the JJ Act 2000 remains unanswered. It is high time for the legislature to amend the ISA 1925 for devolution of property in relation to adopted children and for the judiciary to clearly rule on the devolution rights of adopted children under the JJ Act 2000.

**Inheritance rights of illegitimate children under Indian Christian law**

Christian law is not backed by legislative support for adoption or for accepting illegitimate children and does not grant any inheritance rights to these children. General provisions relating to succession under the ISA 1925 are based on the Statute of Distribution which governs succession to personal property in England, the notable features of which are:

1. That there is no discrimination based on sex among the heirs;
2. That there is no discrimination between persons related by full blood and those related by half blood; and
3. Relations by adoption are not recognized.45

The definition of ‘kindred’ under the ISA 1925 contemplates only relation by blood through lawful wedlock, therefore the term ‘lineal descendants’ refers only to legitimate relationships.46 Illegitimate children are therefore outside the scope of the Act.47 Ironically, Christian law recognises the personality of the child in the womb and grants inheritance rights to the child but denies such rights to illegitimate children.

The ISA 1925 does not define ‘child’ but defines ‘minor’ to mean any person subject to the Majority Act 1875 who has not attained the age of 18 years. ‘Child’ used under the ISA 1925 is without qualification. Under Christian law, only children born from legitimate relationships, ie, from a valid marriage, have the right to inherit property. Children born from void marriage under Christian law are considered illegitimate and incapable of

45 Above n 24.
46 Smith v Massey (1906) ILR 30 Bom 500; In Re Ezra AIR 1931 Cal 560.
47 Smith v Massey (1906) ILR 30 Bom 500.
inheriting property within the meaning of the ISA 1925. For succession, ‘child’ under the ISA 1925 does not include an illegitimate child.\(^4^8\) The Act of 1925 expressly discriminates against illegitimate children in matters of testamentary succession when it states that if the intention of the testator to give the property to the illegitimate children is not clearly mentioned in the will, then the term ‘child’ will refer only to legitimate children.\(^4^9\) The illegitimate child, though unable to claim rights in its mother’s property, has a domicile of origin traced to the country in which at the time of its birth the mother was domiciled.\(^5^0\)

Under the Indian Christian Marriage Act 1872, the following marriages are void:

(a) If either the bride or bridegroom is Christian and the marriage is not solemnized and registered according to the provisions of this Act;\(^5^1\)

(b) Marriage is not solemnized within two months after the notice is given;\(^5^2\)

(c) If the person intending to be married has a wife or husband still living;\(^5^3\)

(d) Marriage solemnized in contravention of mandatory provisions of the Act.

Under the DA 1869, passed to amend the law relating to the divorce of persons professing the Christian religion, a marriage may be declared null and void on the following grounds:\(^5^4\)

(i) the respondent was impotent at the time of marriage and at the time of institution of the suit;

(ii) the parties are within prohibited degree of consanguinity or affinity;

(iii) either party was lunatic or idiot at the time of marriage;

(iv) the former husband or wife of either party was living at the time of marriage and the earlier marriage was subsisting; or

(v) if the consent of either party was obtained by force or fraud.

Under s 21 of the DA 1869 annulment of the marriage confers legitimacy on children born of the marriage in only two situations, (a) a second marriage during the subsistence of the first marriage made in good faith that the former spouse was not alive, and (b) insanity. Children born from such an annulled marriage are entitled to succeed in the same manner as a legitimate child to the estate of the parent(s) alone, who at the time of the marriage were competent to contract. Thus, a child born out of a void marriage is disqualified only if born as a result of a prohibited degree union or when the other party is impotent. It is difficult to understand the justification for conferring partial legitimacy only on children born from a second marriage and born to one of the parents who is insane yet excluding succession rights to children born of a marriage within prohibited degrees or where the respondent is impotent.\(^5^5\)

None of the other laws which provide for legitimisation of children of a void marriage were considered.

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\(^{48}\) In Re Ezra v Unknown AIR 1931 Cal 560.

\(^{49}\) ISA 1925 s 100.

\(^{50}\) ISA 1925 s 8.

\(^{51}\) Indian Christian Marriage Act 1872 s 4.

\(^{52}\) Indian Christian Marriage Act 1872 ss 26, 52.

\(^{53}\) Indian Christian Marriage Act 1872 s 60.

\(^{54}\) Indian Divorce Act 1869 ss 18, 19.

A child begotten to parents whose marriage is void due to other reasons or whose marriage is subsequently declared null and void, is denied legitimacy. Under Christian personal law, the illegitimate child is not entitled to have rights in property, even in the property of his or her parent(s) or to receive maintenance or to participate in the intestacies of either of the parents or grandparents. The Hindu Marriage Act, 1955 which governs Hindus as well as the Special Marriage Act 1954 grant statutory legitimacy to all children born of void marriages, whatever the ground causing the marriage to be void. On the other hand, Muslim law denies legitimacy to all children born of a void marriage, irrespective of the nature of the void marriage. Thus, no other succession laws, except Christian law, discriminate between children born out of different grounds for a void marriage. Thus inconsistency prevails as to the rights of the illegitimate child in property under the ISA 1925 and the DA 1869. The ISA 1925, which governs intestate succession among Christians and is based on firm principles of consanguinity, does not recognise the rights of the illegitimate child whereas the DA 1869 confers partial legitimacy in property of the parent(s). Two different enactments govern the status of such a child. Such discrepancy needs immediate attention by the Indian Government in order to introduce suitable amendments to harmonise these Acts.

In the absence of clear legislative declarations, the courts have been compelled to determine the inheritance rights of illegitimate children. The issue of inheritance rights of illegitimate children born to Christian parents under the ISA 1925 came before the Kerala High Court in Antony v Siyath. The other issues before the court were whether the requirement of central legislation recognising the right of illegitimate children of all classes irrespective of their religion to inherit the property of their parents is urgent and whether children born to parents living as husband and wife during the subsistence of the father’s first marriage are legitimate or illegitimate in the eye of law. The court, by relying on the Supreme Court decision in Devi v State of Bihar pronounced the law to be that the illegitimate child born to the father and mother who lived as husband and wife is to be presumed to be legitimate and such child shall be entitled to inherit the property of their parents along with the children born in a valid marriage. If all children, both legitimate and illegitimate, are entitled to maintenance under s 125 of CrPC 1973, there is no reason or logic in denying the illegitimate child the right of inheritance to the property of his/her parents in cases of intestacy. It is also suggested that the Central Government enact legislation to confer rights of succession on all illegitimate children irrespective of their religion in tune with s 125 of CrPC 1973. Another suggestion was to enact separate laws for members of different religions or a single statute similar to s 125 of CrPC 1973 enabling illegitimate children to succeed to the estate of their deceased.

56 Ibid.
57 Illegitimate child has no right to claim maintenance from his parent(s) under personal law but can claim maintenance under the secular law provisions of the Code of Criminal Procedure 1973.
58 2008 (4) KLT 1002; 2009 ACJ 2272.
father and mother. Equating the facts of *Vidhyadhari v Bai*\(^60\) (where the Supreme Court considered children born to a mother who contracted marriage with a person whose first marriage was not dissolved to be legitimate and granted them a share (allotment) of service benefits of their father) with the facts of the present case the High Court found the child to be legitimate thus entitling him to succeed to the property of the deceased. The court directed the Registry to send a copy of this judgment to the Ministry of Law and Justice, Government of India, the Law Commission of India and Justice V R Krishna Iyer, Chairman, Law Reforms Commission (Kerala), Ernakulam. The pronouncement of the High Court in *Antony* may become a torch-bearer in granting rights to such illegitimate, socially discriminated children. Bearing in mind the development in this area of law in several jurisdictions across the globe it is high time the legislature as well as the Supreme Court of India frame and interpret laws which reflect the protection of rights of such children.

To equate illegitimate children for all and every purpose with legitimate children is clearly not possible without undermining the legal principles of the monogamous family, yet the very least the law can do is to minimise the misfortunes of children born out of wedlock.\(^61\) Necessary changes need to be made in the ISA 1925 to declare that every child born is a legitimate child and will have equal rights in property irrespective of the status of the marriage of the parents. In the first place, the legislature ought to declare the legitimation of children by the subsequent marriage of the parents. No one has the choice of being born to particular parents. An innocent child who is born into a relationship that is not valid in the eyes of the law should not be penalised for the wrong committed by his or her parent(s) and consequently ought not be afforded treatment different from a legitimate child. Stigmatising a child as illegitimate, coupled with affording no right to the property of the parents, acts as a double blow for the child and therefore the law needs to be reformed as it is unreasonable and unfair.

The Law Commission of India, in its 110th Report, has already suggested two alternatives to improve the position of adopted and illegitimate children under the ISA 1925 which are:

(i) Insert a definition of the term ‘child’ as including illegitimate child in s 2, the general definition section, to settle the point in regard to all provisions of the Act; or

(ii) Addition of a suitable explanation to s 37 so as to include illegitimate child within the definition of ‘child’.\(^62\)

The report emphasised including adopted child within the definition of child

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\(^{60}\) (2008) 2 SCC 238.


\(^{62}\) Law Commission of India, 110th Report on Indian Succession Act, 1925 (February 1985) has suggested:

(1) for insertion of new clause under s 2 which is the general defining section as:

(a) ‘child’ includes —

(A) an adopted child, in the case of any one whose personal law permits adoption;

(b) an illegitimate child.

(2) Revision of s 37 as:
more so because the expression ‘mother’ in CrPC 1973 includes adoptive mother for the sake of providing maintenance. Also the General Clauses Act does not define the expression ‘mother’ but that does not necessarily mean that the expression should be read in a restricted sense.

Conclusion and suggestion

The Indian Government is yet to take action by passing a secular law of adoption. The JJ Act 2000 is a small step in reaching the goal enshrined by Art 44 of the Constitution. By virtue of the provisions covered by the JJ Act 2000 and the GWA 1890, which are applicable to all Christians, and also taking a cue from the directions issued for inter-country adoptions by the Apex Court in a number of cases commencing with Laxmi Pande, which were formulated to streamline the adoption of abandoned children, followed by the ‘Guidelines to Regulate Matters Relating to Adoption of Indian Children (1984)’ by the Government of India, it may be possible for a Christian, now, to adopt a child under the civil law of the land.\textsuperscript{63} It would be far better to enact a new law of adoption for Christians, as exists in the Hindu Adoption and Maintenance Act 1956 which lays down requisites of valid adoption, the capacity of the individual to take in adoption, the capacity of a person to give in adoption, the capacity of a child to be taken in adoption, the consequences and effects of adoption and protection of the adopted child etc.

The courts, with their practical approach, are filling the gaps left in the personal laws with respect to adoption. Courts have facilitated adoption under Christian law but no specific law has yet been laid down. There is no suggestion of the reintroduction of the Adoption Bill or any remedy to the long felt need to have a uniform law of succession. Due to the Law Commission’s recommendation and the High Court’s progressive approach arguing for reform in the existing legal framework to remove such disabilities and unreasonable classifications between children, the Indian Succession (Amendment) Bill 1994 was introduced into Parliament, suggesting the addition of an explanation to include adopted children within the definition of ‘child’. The Bill lapsed and with it lapsed the proposed suggestion. It is time that the legislators intervene and bring into force specific legislation that codifies the law governing adoption amongst Indian Christians, particularly to bring certainty in the area of intestate succession. This position must be rectified, especially since adoption is recognised within the religious custom of Christians in India. In order to statutorily recognise the rights of an adopted child under the ISA 1925 for all religions, including adoption among Christians, it is suggested that ss 32 and 37 of the ISA 1925 should be amended as follows:

32 Devolution of such property — The property of an intestate devolves upon the wife or husband, or upon those who are lineal descendants or the kindred of the

37 Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall —

(a) belong to his surviving child, if there is only one, or

(b) shall be divided among all his surviving children as if section 40 applied to the case.

63 Above n 39.
deceased including descendants or kindred through legal adoption, in the order and according to the rules hereinafter contained in this chapter.

37 Where intestate has left child or children only — Where the intestate has left surviving him a child or children, whether biological or through legal adoption, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children.

The recent trend in most countries is to eliminate the distinction between legitimate and illegitimate children and confer property rights on illegitimate children. In England, there is no illegitimate child as the Children Act 1989 abolished the concept of illegitimacy and introduced the concept of parental responsibility which ensures that a child has a legal father/mother, even if the parents are not married. In the United States, no distinction exists between legitimate and illegitimate children as both parents are made responsible to provide support and care to children irrespective of their marital status. Australian law has also abolished any distinction based on illegitimacy. All children whether legitimate, illegitimate or adopted are given the same rights to inherit the parent’s property. The Universal Declaration of Human Rights says that all human beings have equal rights and should be treated with equal dignity and social protection should be given to all children whether born in or out of wedlock.

Granting maintenance rights to illegitimate children under secular law, viz, CrPC 1973, though it provides some initial relief, leaves the child empty handed on attaining majority. The CrPC 1973, which provides relief by way of maintenance, could be amended to extend the relief to inheritance as well, to the deprived illegitimate child to improve their financial status. Intergenerational transfer of property ensures one’s independence and power and also adds to future income, thus denial of inheritance rights to illegitimate children adds to their economic deprivation. The Hindu Succession Act 1956 does recognise inheritance rights of illegitimate children in the property of the mother which shows that the legislature is not against granting rights to them, be it maintenance rights and even inheritance rights. The changing social situation and the intention of the legislature must be taken into account to prevent branding of children as ‘bastards’ for no sin committed by them. Legislation must be given a purposive interpretation to further and not to frustrate the eminently desirable social purpose of removing the stigma on such children.

Despite numerous cases that have attempted to clarify the law regarding the inheritance rights of adopted and illegitimate children among Christians in India, due to a lack of express statutory provision the question with regard to their inheritance rights continue to arise. The inability of adopted and illegitimate children to inherit property is the result of several important deficiencies in the ISA 1925. For rapid change in inheritance laws, the public needs to demand statutory change by the legislature that better reflects the structure and needs of families. To further the intent of today’s descendent,

64 Children Act 1989 s 3(1).
65 Universal Declaration of Human Rights 1948 Art 1.
66 Universal Declaration of Human Rights 1948 Art 25(2).
and to protect the family one creates, state legislatures must eventually
develop new indicators that — along with or apart from marriage and blood
— will help identify membership in modern families and serve as the basis for
more inclusive default inheritance rules.  For achieving the greatest
happiness to the greatest number, the law of inheritance must be reformed to
fill-in the inadequacies and redress the loopholes.

68 R C Brasheir, *Inheritance Law And The Evolving Family*, Temple University Press,