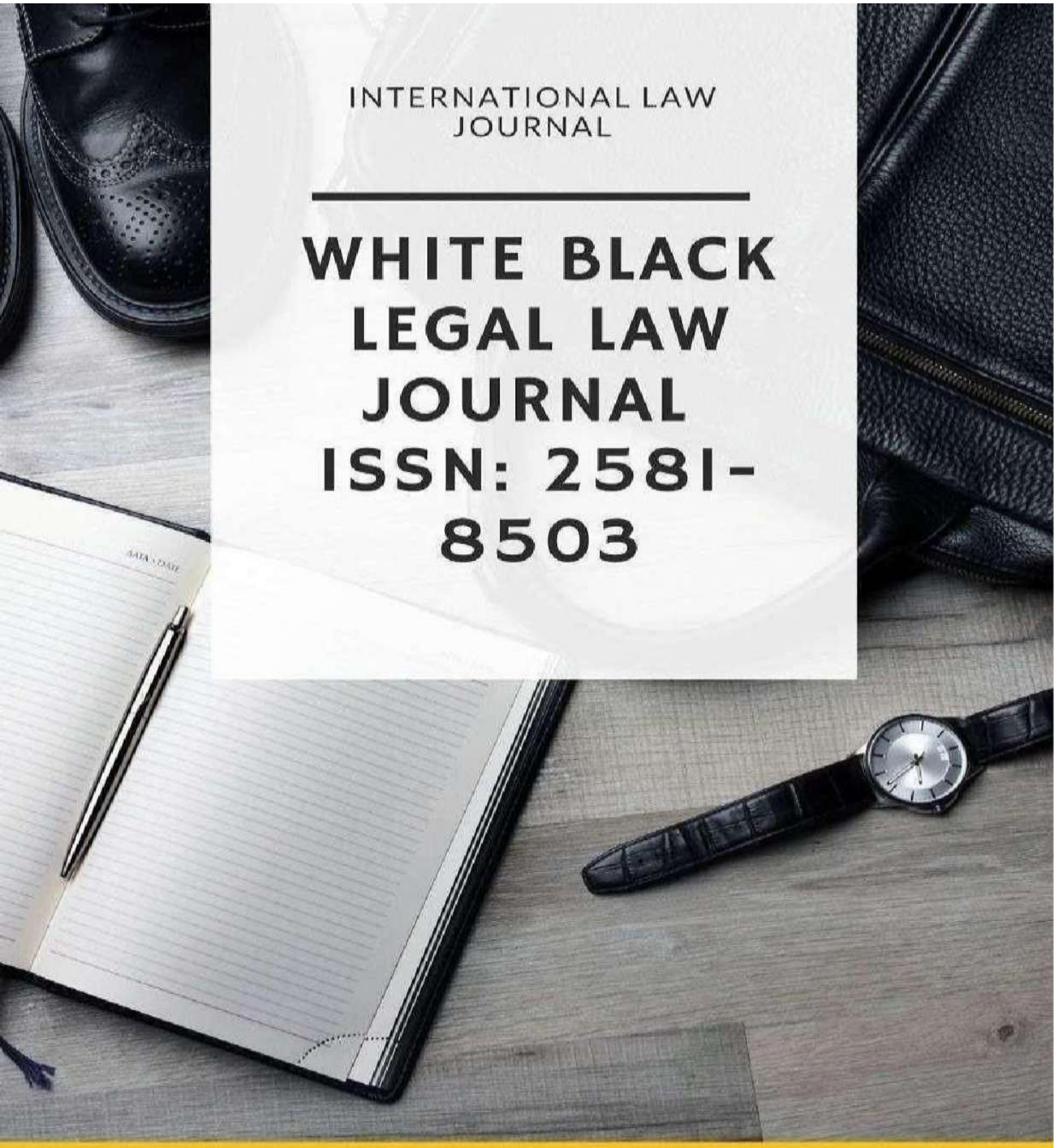

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ADOPTION UNDER DIFFERENT RELIGIONS IN INDIA: WITH REFERENCE TO THE INDIAN MUSLIMS' AND CHRISTIANS' CUSTOMS

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Abstract

This paper explores the multifaceted concept of adoption across various religious traditions in India, with a particular focus on Islamic and Christian customs. Adoption, as a legal and social institution, fulfills vital roles for both children and adoptive families. While Hinduism and Christianity recognize formal adoption, Islam, Zoroastrianism, and Judaism generally prohibit it, instead offering alternative frameworks like *kafala* in Islam. The paper critically examines how the international child rights regime—particularly the UN Convention on the Rights of the Child (CRC), 1989—navigates these religious variations by emphasizing "the best interests of the child" and allowing flexibility for states that do not legally permit adoption. Through a detailed examination of judicial pronouncements and personal law statutes, the paper demonstrates that while Islamic law generally prohibits adoption, certain Indian Muslim communities have historically followed customary practices that resemble adoption. These customs, however, must meet strict legal standards to be recognized. Similarly, Indian Christians, despite lacking a personal adoption law, have maintained region-specific practices of adoption—especially among Punjabi agricultural and Syrian Christian communities—which have been validated by Indian courts. The study also briefly considers the practices of Zoroastrians and Jews, who face religious restrictions against formal adoption. In conclusion, the paper highlights the legal pluralism and socio-religious diversity that shape the institution of adoption in India, urging for a more inclusive and child-centric framework under secular laws such as the Juvenile Justice (Care and Protection of Children) Act, 2015.

Introduction

ADOPTION SERVES many purposes: it fulfils man's desire for the celebrations of his name, for the perpetuation of his lineage, for providing security in the old age and for dying in satisfaction that one has left an heir to one's property; it provides orphan and abandoned children the love and care of the family and the name of the parents. Like adoption, the institution of guardianship is also designed ensure love and care of the family without changing the status of the blood relationship. Every religion is emphatic towards the orphan and abandoned children and make arrangements to alternative care of home, but all religion have the concept of adoption which creates permanent parent-child relationship. Islam, Zoroastrianism, and Judaism do not approve the system of adoption, whereas Hinduism and Christianity recognise adoption. This paper discusses the historical and conceptual approach of adoption under the major religions practiced in India (except Hinduism). In this process, this paper examines how the international child rights law (the *Convention on the Rights of the Child, 1989*) accommodates different religious approaches under it.

UN Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child (hereafter referred as the CRC) is an international human rights treaty which promotes the rights of all children for the whole world. It becomes the most widely ratified human rights treaty in history and has helped transform children's lives around the world. It *is the most universally accepted human rights instrument, ratified by every country in the world except two.*[1] The CRC is the first legally binding international instrument that incorporates the full range of human - civil, political, economic, social, health and cultural rights of children. *The Convention was adopted by the UN General Assembly on 20th November 1989 and entered into force in September 1990.*[2] *The CRC mentions adoption only in two Articles. Article 20 declares adoption, in general and Article 21 states the intercountry adoption.*

[1] Two countries, the United States and Somalia, have not ratified the Convention. "The United Nations Convention on the Rights of the Child" *Congressional Research Service* Jul. 27, 2015, available at: https://crsreports.congress.gov/product/pdf/R/R40484/25#:~:text=CRC%20entered%20into%20force%20in,have%20not%20ratified%20the%20Convention (last visited January 12, 2023).

[2] Manual for Human Rights Education with Young People, "Convention on the Rights of the Child" *Council of Europe*, available at: https://www.coe.int/en/web/compass/convention-on-the-rights-of-the-child (last visited January 12, 2023).

The 'Best Interest of the Child' under the international laws

'Best Interest of the Child' is a transitional, evolutionary concept. In the international arena the journey of 'Best Interest of the Child' was began in 1959. This concept was enshrined in the Declaration of the Rights of the Child, 1959[3] in Principle 2.[4] But the change in the perspective of the international community happened in the 1980s. The previous decades witnessed the alarming accounts of the children who were victims of armed conflicts and civil wars; abused and exploited in prostitution, slavery, and harmful jobs; or in prison or other difficult circumstances.[5] The child's right to have a family, a family name, and inheritance rights are the foundation of 'Best Interest of the Child'. The full application of the concept of 'Best Interest of the Child' requires the development of a rights-based approach.[6]

The CRC changed the perspective of children's human rights jurisprudence. The UN Convention on the Rights of the Child, 1989, was drafted in the foreground of the 'Best Interest of the Child' and was to evaluate and balance 'all the elements necessary to make a decision in a specific situation for a specific individual child or group of children'.[7] It is mandatory for the state parties to incorporate the 'Best Interest of the Child' in all aspects of child-related legislations and policies. Since the CRC came into force, the 'Best Interest of the Child' has been the guiding principle for all child laws. The Committee on the Rights of the Child dedicated General Comment 14 to developing the principle of 'Best Interest of the Child'. The CRC aims to achieve two purposes: 1) judicial and administrative decisions as well as other actions like laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives, and guidelines – that is, all implementation measures concerning children should adopt a "child-friendly" approach;[8] 2) all the measures aim to ensure the physical, mental, spiritual, moral, psychological, and social development of the child.[9]

[3] The Hague Conference, 1902 was the first international legal instrument where "the child's best interest" was mentioned. The Geneva Declaration, 1925 also highlighted the role of adults to protect the children.
[4] Principle 2 – "The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity."
[5] "Background to the Convention: Committee on the Rights of the Child" *OHCHR*, https://www.ohchr.org/en/treaty-bodies/crc/background-convention (last visited January 11, 2023).
[6] *Supra* Note 1 at p. 4.
[7] CRC Committee, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, CRC/C/GC/14, 12 (May 29, 2013), available at: https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf (last visited January 13, 2023).
[8] *Supra* Note1 at p. 10.
[9] *Supra* Note 1 at paras 4–5.

The 'Best Interest of the Child' under Article 3 of the CRC has three principles: Article 3.1 says the best interests of the child shall be a primary consideration in all actions directly or indirectly concerning children, both in the public and the private sphere; Article 3.2 states, in turn, that states are obliged to undertake all legislative and administrative measures to ensure the protection and care necessary for children's wellbeing; Article 3.3 declares states shall ensure that those responsible for children's protection and care conform with quality standards established by competent authorities and that mechanisms are in place to ensure that these standards are respected. Neither 3.1 CRC nor General Comment 14 recommends what is best for the child in any given situation as to presume all factual situations would be impossible and impractical for an international instrument.[10]

Status Of The Institution Of Adoption Under Different Religions

As it is mentioned earlier that all religions do not treat unrelated children as equivalent to biological children of the adoptive parents. So, the religions have different approaches to the concept of adoption. They are as follows:

Islam

The Quran negated the creation of any fictive lineal relationship of lineage. So, Islam forbids adoption of children and does not recognise an adopted child as per with a biological child. The prohibition of adoption in Islamic law goes back to the story of Zayd bin Haritha, a slave whom Prophet Muhammad bought. When Zayd's father came to Mecca to reclaim his son, Zayd chose to stay with Muhammad. Moved by Zayd's affection, Muhammad released him from slavery and adopted him (*tabanna*) as his son in a solemn ceremony. Thereafter, Zayd was called Zayd bin Muhammad, *i.e.,* Zayd, son of Muhammad. Zayd married Zaynab bint Jah.sh, the cousin of the Prophet, but divorced her. Subsequently, the Prophet married Zaynab.[11] As a result of this marriage, Zayd's adoption was quickly rescinded and his name returned to his former name upon the revelation of the following verses:

> Allah has not made for any man two hearts in his (one) body: nor has He made your wives whom ye divorce by *Zihar* your mothers: nor has He made your adopted sons your sons. Such is

[10] Roger Levesque, "Geraldine Van Bueren, The International Law on the Rights of the Child" 19(2) *Fordham international Law Journal* 47 (1995), available at: https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2235&context=ilj (last visited December 4, 2022).

[11] Faisal Kutty, "Islamic Law and Adoptions" *Valparaiso University Legal Studies Research Paper No. 14-5*, 15-16 (Cambridge Scholars Publishing, Newcastle upon Tyne, June 2014), available at: http://ssrn.com/abstract=2457066 (last visited February 2, 2023).

(only) your (manner of) speech by your mouths. But Allah tells (you) the Truth, and He shows the (right) Way. [Quran 33:4][12]

The above passage of the Quran has been interpreted to prohibit adoption (*tabanni*).[13] The legal fiction of adoption flows from the fabrication that someone who is not the father acquires rights similar to those of the biological father through a process called 'legitimation'. Notwithstanding the diversity and legal pluralism in Islamic law, the classical jurists and interpreters of the *Quran* and *Sunnat* unanimously declared that adoption is prohibited in Islam.[14] Nevertheless, Islam legitimises the acknowledgement of paternity (*iqrar-e-nasab*).[15] The distinction between legitimacy and legitimation is that legitimacy is a status which results from certain facts, for *e.g.*, the child was born out of wedlock between the mother and the begetter, whereas legitimation creates a status that did not exist before.[16] Acknowledgement, in Islam, follows:

a) **Unknown paternity** – The doctrine applies only to cases where the paternity of the child is not known or established beyond doubt.[17] Hence, the doctrine distinguishes between the legitimacy of the acknowledged child is not proved (by the fact of the marriage itself or the exact time of its occurrence) with disproved.[18]
b) **Must not be illegitimate** – Mohammedan Law proceeds upon the assumption of uncertainty of the legitimacy of the acknowledged child and presumption of the lawful union between the parents. In other words, it must not be proved that the claimant is the offspring of *Zina* (illicit intercourse).[19]
c) **Nothing to rebut presumption -** The circumstances are such that there is no evidence to rebut the presumption of paternity, hence, an acknowledgement of paternity by the father is possible and effective. For example,

[12] Translated by Dr. Mustafa Khattab, "Quran.com", available at: https://quran.com/33 (last visited February 3, 2023).
[13] Nadjma Yassari, "Adding by Choice: Adoption and Functional Equivalents in Islamic and Middle Eastern Law" 63(4) *AJCL*, Max Planck Private Law Research Paper No. 16(4), 930-931 (Oxford University Press, Oxford, January 2016), available at: http://ssrn.com/abstract=2714359 (February 4, 2023).
[14] *Supra* Note 3. *Quran* 58:2 states "[t]heir mothers are only those who have given birth to them" and 33: 4-5 states "God did not make those whom you call your sons, your sons [in reality]". Ella Landau-Tasseron, "Adoption, Acknowledgement of Paternity and False Genealogical Claims in Arabian and Islamic Societies" (2003) 66(2) *BSOAS* 169 (2003) Daniel Pollack, Moshe Bleich, et. al., "Classical Religious Perspectives on Adoption Law" 79(2) *NDLR* 139 (2008).
[15] *Supra* Note 4 at p. 939.
[16] *Habibur Rahman* v. *Altaf Ali Choudhury*, (1921) 48 IA 114.
[17] *Mohd. Allahadad* v. *Mohd. Ismail*, (1888) 10 All 289.
[18] A.A.A. Fayzee, *Outlines of Muhammedan Law* 154 (Oxford University Press, New Delhi, 5th edn., 2008).
[19] *Id.*, at p. 155.

1. the age of the parties must be such as to be in consonance with the presumption of paternity.
2. the marriage must be possible between the parents.
3. there must not have been a disclaimer or repudiation on the part of the person acknowledged.[20]

The CRC; adoption; and Islamic states

Therefore, all Islamic countries restrict child adoption. The Committee that drafted the CRC was careful not to conflict with the Islamic prohibition of adoption. Article 20 of the CRC does not provide a right to adoption. Instead, it gives the right to 'alternative care' to children who are temporarily or permanently without a family. It includes foster care, adoption (or *kafala*), and institutional care that is 'in accordance with national law.'[21] Keeping in mind the Islamic laws, *Kafala* is specifically mentioned in Article 20. Also, Art. 21 of the CRC which ensures that 'the best interest of the child shall be the paramount consideration', only applies to those states 'that recognise and/or permit the system of adoption.'[22] These provisions were drafted cautiously so that the Islamic states do not need to make a reservation to either CRC Article 20 or 21 to preserve the supremacy of Islamic law regarding adoption. In spite of the efforts of the drafting committee, four Arab States (Brunei Darussalam, Egypt, Jordan, and the Syrian Arab Republic) have entered explicit reservations to Article 20; and seven Islamic states have entered reservation to Art. 21 (Bangladesh, Brunei Darussalam, Indonesia, Jordan, Kuwait, Maldives, and the Syrian Arab Republic) on the grounds that adoption is incompatible with the principles

[20] *Id.*

[21] CRC, Art. 21 reads:

> 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
> 3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

[22] CRC, Art. 21 reads: States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

> (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.

of Islam.[23] Islamic states reserve other provisions of the CRC on the ground of contradiction with Islamic laws.[24]

Custom of adoption followed by Indian Muslims

The custom of adoption was not unknown amongst the different classes of Indian Muslims. In the places of Sindh,[25] Ajmer[26], Punjab,[27] Rajasthan, Kashmir,[28] Madhya Pradesh[29], and Bombay[30] the adoptions were practiced. In the case of *Muhammad Allahdad Khan* v. *Muhammad Ismail*,[31] Mahmood, J., declared that there is nothing in the Muslim law that is similar to adoption as recognised by the Hindu system. Alongwith Mahmood, J., the Islamic authors in India also of the view that adoption, creating a relationship of parentage, as it is known among Hindus, does not prevail among Muslims. Ameer Ali,[32] were also noted in their commentaries that adoption is unfamiliar to Muhammedan law. Tyabji in his book *The Personal Law and Muslims in India and Pakistan* observed:

> "Paternity or maternity is not established in a Muslim who purports to adopt another, nor is the latter considered in law to be the child of the former. Adoption is not known to Muslim law."

In the same Chapter he also stated:

> "A Muslim who alleges that he is by custom subject to the Hindu Law of adoption must prove it, and proof of the retention of the law of inheritance and succession does not imply that the

[23] "Implementation Handbook for the Convention on the Rights of the Child", 3 *UNICEF* 281, 294 (UNICEF Regional Office for Europe, Geneva, September 2007) p. 281, 294, available at: https://www.unicef.org/lac/media/22071/file/Implementation%20Handbook%20for%20the%20CRC.pdf (last visited January 29, 2022).

[24] For *e.g.*, Bangladesh also reserve Art. 14(1) of CRC. Art. 14(1) protects the child's right of freedom of thought conscience and religion. Bangladesh was concerned that Islamic law would be violated if the CRC permitted children to change their religion.
"Reservations to The Convention on the Rights of the Child: A Look at the Reservations of Asian State Parties", *International Commission of Jurists*, 9-10 (International Commission of Jurists, Geneva, 1994), available at: https://www.icj.org/wp-content/uploads/2013/10/Asia-Convention-Rights-of-the-Child-non-legal-submission-1994-eng.pdf (last visited January 15, 2023).

[25] *Usman* v. *Asat*, AIR 1925 Sind 207.

[26] *Abdullah Khan* v. *Ginda*, 11 I.C. 670.

[27] *Khair Ali Shah* v. *Imam Shah*, AIR 1936 Lah 80.

[28] *Mohd. Akbar Bhat* v. *Mohammad Akhoon*, AIR 1972 J & K 105; *Mst. Khatgi* v. *Abdul Razzaq*, AIR 1977 J& K 44.

[29] *Abbasali Shah* v. *Mohammad Shah*, AIR 1951 Madhya Bharat 92.

[30] *Ayubsha Amirsha Jamadar* v. *Babalal Mahabut Danawade*, AIR 1938 Bom 111.

[31] *Muhammad Allahdad Khan* v. *Muhammad Ismail*, ILR (1888) 12 ALL. 289.

[32]

> law of adoption has also been retained."[33]

Before the Muslim Personal Law (*Shariat*) Application Act, 1937, adoptions among some Muslim families were recognised and allowed by custom.

The Muslim Personal Law (*Shariat*) Application Act, 1937

The most important and far-reaching enactment dealing with the application of the Muslim law in India is the Muslim Personal Law (*Shariat*) Application Act, 1937 (hereafter referred to as the *Shariat* Act, 1937). This short enactment of six sections aims at restoring the law if Islam to all Muslim communities and doing away with customs contrary to the *Shariat*.[34] Section 2 of the Act provides:

> "Notwithstanding any custom or usage to the contrary, in all questions regarding intestate succession, special property of females including personal property inherited or obtained under contract or gift or any other provision of personal laws, marriage, dissolution of marriage, including *talaq, ila, zihar, lian, khula* and *mubaraat,* maintenance, dower, guardianship, gifts, trusts and trust properties and wakfs (other than charities and charitable institutions and charitable and religious endowments), the rules of decision in cases where the parties are Muslims, shall be the Muslim Personal Law (*Shariat*)."

Whereas, Section 3 of the Act lays down that regarding adoption, will and legacies if a person desires Muslim law to be applied he can make a declaration to that effect and he will thereafter be governed in these matters by Muslim law. Asaf Fayzee observed that Section 3 aims at compelling the Muslim communities to give up rights contrary to the Muslim law, merge into general Islamic community, and be governed exclusively by the laws of the *Shariat*.[35] In the past adoption under among Muslims was held valid either under customary law or under a special statute, like Oudh Estates Act, 1869.[36] Before the enactment of the Hindu Adoptions and maintenance Act, 1956, the court recognised that if a Hindu father after conversion to Islam, retained the custom of adoption alongwith his right as a father to give in adoption, he did not lose it by virtue of the Caste Disabilities Removal Act, 1850.[37] In the case of *Abdul*

[33] F. B. Tyabji, *The Personal Law and Muslims in India and Pakistan (N M. Tripathi, Mumbai, 4th edn., 1968).*
[34] *Bank of India* v. *Bowman*, AIR 1955 Bom 305.
[35] A. A. A. Fyzee, *Outlines of Muhammadan Law* 43-44 (Oxford University Press, New Delhi, 5th edn., 2008).
[36] *Abdul Halim* v. *Saadat*, AIR 1932 PC 137; *Ayub* v. *Babalaat* AIR 1938 Bom 111.
[37] Tahir Mahmood, *The Muslim Law of India*, 138 (LexisNexis Butterworths, New Delhi, 3rd edn., 2002).

Hakim v. *Gappu Khan*,[38] the Rajasthan High Court observed that the custom of adoption, which was common practice amongst *Mahavatan* community of Muslims was quite similar to that of Hindu adoption system. In this case the High Court made three observations:

1. Adoption is not known to Muslim Law;
2. By virtue of custom of Mohammedans may also have the system of adoption;
3. A Muslim who alleges that by custom he is subject of adoption must prove it.

In the case of *Puthiya Purayil Abdurahiman* v. *T. K. Avoomma*,[39] the Madras High Court declared that the provisions of the *Shariat* Act did not in terms totally abrogate custom and usage in respect of matters other than these enumerated in Sections, 2[40] and 3 (1) thereof. Following this judgment, in the case of *Moulvi Mohammed and Ors.* v. *Mohaboob Begum*,[41] the Madras High Court observed that the *Shariat* Act, 1937 ruled out custom or usage with reference to the enumerated subjects in Section 2 thereof and enables, the Muslim to rule out custom or usage with regard to the subjects referred to in Section 3(1). Adoption as is not one of the enumerated subjects in Section 2. Hence, there can be a custom or usage having the force of law with regard to adoption. The Court continues:

> "It is needless to point out that custom must be ancient and the burden of proof lies upon the party who sets up the custom. The custom to hold good in law must be reasonable and the majority atleast of any given class of persons must look upon it as binding and it must be established by a series of well-known concordant and on the whole continuous instances."

In the case of *Moulvi Mohd*. v. S. *Mohaboob Begum*,[42] the Madras High Court decided that unless there is a proof that a custom or usage having the force of law with regard to adoption,

[38] *Abdul Hakim* v. *Gappu Khan*, SB CSA No. 115/1950 decided on 22.12 1954.
[39] Puthiya Purayil Abdurahiman *v.* T. K. Avoomma, AIR 1956 Mad 244.
[40] the Muslim Personal Law (*Shariat*) Application Act, 1937, Sec. 2 reads:

> Application of Personal law to Muslims.—Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including *talaq, ila, zihar, lian, khula and mubaraat*, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).

[41] *Moulvi Mohammed and Ors.* v. *Mohaboob Begum*, AIR 1984 Mad 7.
[42] *Moulvi Mohd.* v. *S. Mohaboob Begum*, AIR 1984 Mad 7.

it cannot be stated that the custom exists. In the case of *Nenoo khan* v. *Mst. Seguni*,[43] the Rajasthan High Court held:

> "The parties are Mohammedans and admittedly there is no institution like adoption amongst Mohammedans. It is true that by virtue of custom of Mohammedans may also have the system of adoption. In absence of any plea or evidence regarding custom of adoption prevalent in the families of the parties or the community to which the parties belong."

From the above-mentioned judgments, it can be derived that the Section 2 recommends the subjects which are to be governed by Muslim Personal (*Shariat*) Application Act, 1937 notwithstanding any custom or usage to the contrary. the matters enumerated in Section 2 do not include adoption. Under the non-mentioned subjects if a valid custom exists among the parties, then it is permissible.

Similar to interpretations of the Indian Courts, the Courts in Pakistan in matters of adoption, Muslim personal law does not automatically apply to an individual. Adoption was formalised only when a guardian court issued a decree or a guardianship certificate to an individual under the Guardian and Wards Act, 1890.[44] Though adoption is not permissible, it is not unknown to Indian Muslims.

Before 2019, the *Shariat* Act, 1937 was not applicable to Jammu and Kashmir,[45] the Kashmiri Muslims practise the custom of adoption. In the case of *Khatji* v. *Abdul Razak Sufi*,[46] the Jammu and Kashmir High Court validated the custom of *Pisar Parwarda*, and upheld the right of an adopted son (*Pisar Parwarda*) inheriting a share in the properties of his adoptive father under a valid custom. But since the Jammu and Kashmir Muslim Personal Law (*Shariat*) Application Act, 2007[47] expressly made the *Shariat* Act, 1937 applicable to the State of Jammu and Kashmir. As it is mentioned earlier that the custom of adoption remained unmentioned under the subject-matters of the application of the *Shariat* Act, 1937. So, after 2007, the status of the

[43] *Nenoo khan* v. *Mst. Seguni*, 1974 WLN UC 5.
[44] Naqir Iqbal, "SC takes up issue of deserted children's adoption" *DAWN*, Islamabad, Apr. 18, 2014 available at: http://www.dawn.com/news/1100655 (last visited February 10, 2023).
[45] The Muslim Personal Law (*Shariat*) Application Act, 1937 (Act No. 26 of 1937), Sec. 1(2). In 2019, the words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).
[46] *Khatji* v. *Abdul Razak Sufi*, AIR 1977 J & K 44.
[47] The Jammu and Kashmir Muslim Personal Law (Shariat) Application Act, 2007 (Act No. 4 of 2007), available at: https://jkgad.nic.in/common/showOrder.aspx?actCode=N11116 (last visited February 5, 2023).

custom of *Pisar Parwarda* is uncertain.

In the case of *Shabnam Hashmi* v. *Union of India*,[48] the All India Muslim Personal Law Board was called upon to submit their perspective on the secular adoption law of India. In its written submission, the Board stated that Islamic law does not recognise an adopted child to be at par with a biological child. It only recognises *Kafala,* where the child is placed under a *Kafil* who provides for the well-being of the child, including financial support, but the child does not become descendant of the *Kafil*. In response, the Supreme Court confirms that Juvenile Justice Act is an enabling legislation that gives the prospective parent the option of adopting a child. The Juvenile Justice Act does not mandate any compulsive action. The prospective parents have the liberty to access the provisions of the Act, if they desire so.

Christianity

The concept of adoption was embedded in Christianity.[49] In Christian theology, adoption is the reception of a believer into the family of God. In the Reformed *ordo salutis* (order of salvation), adoption is regarded as a step immediately subsequent to justification.[50] Adoption introduces as the consequences of salvation. There are three references in the New Testament to God adopting Christians as his own children – Galatians 4:5,[51] Romans 8:15,[52] and Ephesians 1:5.[53]

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[48] *Shabnam Hashmi* v. *Union of India*, MANU/SC/0119/2014; 9-10: Also available at: http://cara.nic.in/PDF/Court%20Orders/2.%20Shabnam%20Hashmi%20Vs%20UOI%20&%20Ors%20CWP%20No.%20470%20of%202005.pdf (last visited January 10, 2023).

[49] Asha Bajpai, *Child Rights in India: Law, Policy and Practice* 39 (Oxford University Press, New Delhi, 2nd edn., 2006).

[50] In Christian theology, 'justification' is the event or process by which sinners are made or declared to be righteous the sight of God. Elizabeth Livingstone and Frank Cross, *The Oxford Dictionary of the Christian Church* 914 (Oxford University Press, Oxford, 2005).

[51] Galatians 4:5 reads:

> "But when the set time had fully come, God sent his Son, born of a woman, born under the law, [5] to redeem those under the law, that we might receive adoption to sonship."

Bible Gateway, available at: https://www.biblegateway.com/passage/?search=Galatians%204%3A4-5&version=NIV (last visited January 11, 2023).

[52] Romans 8:15 reads:

> "The Spirit you received does not make you slaves, so that you live in fear again; rather, the Spirit you received brought about your adoption to sonship."

Bible Gateway, available at: https://www.biblegateway.com/passage/?search=Romans%208%3A15&version=NIV (last visited January 11, 2023).

[53] Ephesians 1:5 reads:

> "he predestined us for adoption to himself as sons through Jesus Christ, according to the purpose of his will."

Biblia, https://biblia.com/bible/esv/ephesians/1/5 (last visited January 11, 2023).

The most popular example of adoption was Moses' adoption. Jochebed, who parted with her child knowing that his life was in danger if he remained with her; and Pharaoh's daughter, who felt compassion on a child knowing that, by mandate, would be killed. God used these two women to save Moses' life and provide him with a safe and secure childhood.[54]

The Indian Christians did not have any personal adoption laws. But different Christian communities in India followed customs of adoption that were also recognised by the Indian Courts.

2.3.2.1. Punjabi agricultural Christians

In this context, the earliest decision was in 1929, *Sohan Lal* v. *A.Z. Makuin*,[55] where the Lahore High Court held that in the case of a *Punjabi* who converted to Christianity, it might be possible to prove the customary right of adoption applicable to the members of the original caste. But the Allahabad High Court clarified that if a party alleged that there had been a custom of adoption among the Christian community or any section of that community in Punjab, it was necessary for the party to prove it.[56] Nevertheless, in 1944, the Lahore High Court held that among the agricultural tribes of Punjab, adoption was not a religious incident but a purely secular arrangement resorted to by a sonless owner of land in order to nominate a person to succeed him as his heir. The Supreme Court of India, in a Special Leave Petition, in the case of *Hem Singh and Anr.* v. *Harnam Singh*,[57] reiterated in the judgment of Lahore High Court. By virtue of these decisions customary law on adoption among *Panjabi* Christians was proved, and their rights were judicially recognised. However, in a case where a Buddhist adoptive parent subsequently became Christian and died as a Christian, the Rangoon High Court held that an adopted child is not an heir entitled, upon intestacy, to inherit the estate of his deceased adoptive parent.[58]

Keralite Christians

Among the Syrian Christians of Travancore, there had been an ancient custom of adoption. If

[54] "Adoption: A Biblical Perspective" *Christian Adoptions Alliance*, available at: https://christianadoptions.org/domestic-adoption/general-adoption-information/adoption-a-biblical-perspective/ (last visited January 11, 2023).
[55] *Sohan Lal* v. *A.Z. Makuin* AIR 1929 Lahore 230.
[56] *Ranbir Karam Singh* v. *Jogindra C. Bhattachargi*, AIR 1940 All. 134 at 139.
[57] *Hem Singh and Anr.* v. *Harnam Singh*, 1954 AIR 581; also available at: https://main.sci.gov.in/jonew/judis/944.pdf (last visited February 13, 2023).
[58] *Ma Khin Than* v. *Ma Ahma*, AIR 1934 Rangoon 72.

a Syrian Christian man had only one daughter, she became the heiress to his property after her father's death. But he had several daughters and no son, the elder daughters were given in marriage with proper *streedhanom* (dowry) and sometimes even a portion of the father's property. But when the youngest daughter got married, her husband subsequently became the adopted son of his father-in-law and assumed the latter's family name. The adopted son-in-law generally resided.[59]

However, judicial recognition of this customary practise of adoption was given in 1999. In the case of *Philip Alfred Malvin* v. *Gonsalvis*,[60] the Kerala High Court held that it was an admitted fact that Christian law did not prohibit adoption and also that Canon law had recognised adoption. The Division Bench of the High Court in *Maxin George* v. *Indian Oil Corporation Ltd*.,[61] held that not having a separate statute for adoption does not mean that an adopted son would not be entitled to inherit the properties of his adoptive parents. The Court said that apart from the religious motives, secular motives are also important to a man's desire for the celebration of his name, the perpetuation of his lineage, providing security in old age, and dying in satisfaction that one has left an heir to one's property.

Zoroastrianism

Parsees in India have a customary form of adoption called *Palakputra and Dharamaputra* by which the widow of a Parsee dying childless adopts on the 4th day of the death of the husband, for the purpose of performing certain religious ceremonies and rituals for the deceased annually. It is purely contractual and is determined at the option of either of the parties. But this practise does not confer any proprietary rights on the *ad hoc* adopted child.[62] Otherwise, adoption is not recognised by the Pasis. In the case of *Jamshedi Oursetjee Tarachand* v. Soonabai,[63] Dinshaw Davar, J., declared:

> "if this is the belief of the community and it is proved undoubtedly to be the Zoroastrian community – a secular Judge is bound to accept that belief – it is not for him to sit in judgment

[59] Anantakrishna Ayyar, *Anthropology of Syrian Christians* 129-130 (Cochin Government Press, Ernakulam, 1926), available at: https://ia800909.us.archive.org/0/items/AnthropologyOfTheSyrianChristiansEbook/Anthropology_of_The_Syrian_Christians_ebook.pdf (last visited February 12, 2023).
[60] *Philip Alfred Malvin* v. *Gonsalvis*, AIR 1999 Ker. 187.
[61] *Maxin George* v. *Indian Oil Corporation Ltd*., 2005 (3) K.L.T 57.
[62] "Christian Law of Adoption in India", available at: https://www.christianfort.com/ICAA.htm (last visited January 25, 2023).
[63] Jamshedi Oursetjee Tarachand *v.* Soonabai (1907) ILR 33 Bom 122.

of that belief."

Every child induced into Zoroastrian religion through *navjote* ceremony.[64] However, there are some confusions arise that if a priest is not willing to perform the *navjote* ceremony to a child whose parentage is unknown how the adoptive parents will confer any legal or religious rights to the child.[65]

Judaism

According to *Halacha* (is the collective body of Jewish religious laws), legal identity of a child is determined at the moment birth based on the status of the biological parents. Given the importance of lineage to the Jewish tradition, adoptive parents therefore cannot replace the biological parent.[66] But, Israel was willing to develop secular laws. So, it created a compromise between Halacha and the secular legal system. The Knesset (the unicameral legislature of Israel) adopted "Adoption of Children Law' in 1960. The law was adopted in 1981 to contain the religious matching clause which stipulated that the adopter must be the same religion as the adoptee. This amendment made it difficult for the Jewish population in Israel to adopt children internationally. However, with the ratification of the Hague Intercountry Adoption Convention in 1993, the legislature resolved this legal impediment regarding adoption of the same religion by amending Section 13A of the Capacity and Guardianship Law.[67]

Conclusion

Many of the religions do not allow adoption. As per the general understanding, Islam does not approve adoption. During the argument of the case of *Shabnam Hashmi* v. *Union of India*,[68] also, only the prohibition under the Islamic law was raised, but the Parsis and Jews also have religious impediment to adopt a child. The Supreme Court clarified that the Juvenile Justice (Care and Protection of Children) Act, 2015 is an enabling legislation, it does not have mandatory application.

[64] "The Navjote Ceremony" *Zoroastrians.net*, Aug. 22, 2022, available at: https://zoroastrians.net/2022/08/29/the-navjote-ceremony/ (last visited on January 27, 2023).
[65] Noshir Dadrawala, "Parsis and Adoption" *Traditional Zoroastrianism*, Apr. 6, 2007, available at: http://traditionalzoroastrianism.blogspot.com/2007/04/parsees-and-adoption-opinion-by-various.html (last visited on January 27, 2023).
[66] Rabbi Michael Gold, "Adoption: The Jewish View" 3(1) *AQ* 5-6 (1999), available at: https://www.tandfonline.com/doi/abs/10.1300/J145v03n01_02 (last visited January 25, 2023).
[67] Mark Goldfeder, "The Adoption of Children in Judaism and in Israel; a Conceptual and Practical Review" 22 *CJICL* 321-353 (2014), available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/cjic22&div=15&id=&page= (last visited January 25, 2023).
[68] *Shabnam Hashmi* v. *Union of India*, MANU/SC/0119/2014.