

Final Report on the Law Commission's Recommendations for the Amendment of the Divorce Act of 1869 (Divorce of Christian Couples) and Enactment of a New Law on Adoption by the Christians

The need for Christian law reforms has never sufficiently attracted the attention of the society or of the government. One reason is the lack of knowledge and discussions of the issue even within Christian community. Another reason may be the small Christian population in the country. But is a population of more than half a million as it is in Bangladesh is small?

Law Commission of Bangladesh undertook the task of conducting research on Christian family law in Bangladesh which seemed to the Commission to be discriminatory against women. This should be made clear that the Commission does not purport to propose amendment of Canon laws, as they have been time to time decreed by Vatican, but to recommend amendment of the existing Christian civil laws and where necessary enactment of new laws. One very encouraging thing about the reform of Christian law in Bangladesh is that there is a broad consensus in the Christian community on the need for reforms.

Moreover, proponents of canon laws do not look negatively at the civil law development of the Christians concerning their family lives and relations, so far as it does not affect the Canon laws, or purports to abolish Canon law. Canon law does not yet approve of divorce, but of annulment of marital ties under specific circumstances to be enforced by ecclesiastical courts. Large body of Christian civil family law as developed for both Catholics and Protestants with their divergent sects is the result of collective ecumenical efforts through out the world. The development is on-going. Law Commission intends to draw the attention of the authorities to the issues of divorce, adoption and some instances of inheritance for further development of Christian family law in Bangladesh.

Law Commission sought the assistance of many individuals and organisations concerned with and having expertise in Christian law who proved to be of great help in the Commission's work. Amongst the organisations are National Council of Churches Bangladesh (NCCB), Bangladesh Christians Lawyers Association (BCLA) and South Asian Institute of Advanced Legal and Human Rights Studies (SAILS). In fact, Commission's main outsourcing institution was SAILS a team of which led by Dr. Faustina Pereira, a Supreme Court advocate and Director of BRAC Human Rights and Legal Aid Services, did a comprehensive field and research study in constant touch with the Law Commission. Law Commission expresses its sincere gratitude to SAILS, Dr. Pereira and the members of her research team. The Commission also expresses its gratitude to Most Rev. Patrick D'Rozario, CSC, Archbishop of Dhaka for his advices in recommending reforms for Christian civil laws.

Proposed Amendment of the Divorce Act of 1869

Law Commission in a final report on February 19, 2006, proposed amendment of the Divorce Act 1869 on differential rights of the wife and the husband to seek divorce (Section 10) and on the forum of seeking relief of divorce.

As per existing law a husband can seek divorce on ground of adultery. On the other hand, a Christian wife seeking divorce must not only prove adultery, but it must be accompanied by many other allegations i.e. cruelty, desertion, change of religion etc.

This is a very unequal and discriminatory situation for the women. Law Commission proposed to abolish this discrimination by recommending common grounds of seeking divorce by the spouses. Law Commission also recommended inclusion in the Act of a new provision for divorce by mutual consent. The present Commission fully agrees with the above recommendations.

However, the present Law Commission differently (from its 2006 Report) recommends on the forum of seeking divorce relief. Sections 3,4,7,14,16,17 of the 1869 Act deal with the forum of seeking relief providing for concurrent jurisdiction of the District Court and the High Court Division of the Supreme Court for divorce petition, and confirmation of the verdict of the district court by the High Court Division. The Commission recommends for omission of these sections and to insert new sections bringing the petitions under preliminary jurisdiction of the family courts, from where appeals, if any, will lie with higher courts. Should the proposition be accepted, consequential changes would need to be brought in the Act.

The Law Commission also recommends the Section 11 of the Act making the adulterer a co-respondent be omitted.

Enactment of law on Adoption

The demand for a law of adoption amongst Christians in Bangladesh has existed for some time, and is also in keeping with the provision of Canon 110 of the Code of Canon Law which states: "Children who have been adopted according to the norm of civil law are considered the children of the person or persons who have adopted them. Law Commission gives below an outline of a draft law on adoption.

Application of Act:	This Act applies to all Christians domiciled in the territories in which this Act extends
Definitions:	<p>In this Act, unless the context otherwise requires:</p> <p>a. "Adoption" means the admission of an outsider by birth to the privileges of a child by a legally recognized form_of affiliation, whereby the adoptee becomes the legal heir of the adopter and terminates any legal rights then in existence with the natural parents.</p> <p>b. "Child" means a person who has not completed eighteen years</p>

	<p>of age.</p> <p>c. "Christian" means a person who professes the Christian religion.</p> <p>d. "Maintenance" includes in all cases, provision of food, clothing, residence, education, medical attendance and treatment, recreation and where necessary, the reasonable expenses of an incident of marriage.</p> <p>e. "Guardian" means a person having the care of the person of a child or of both his or her person and property and includes a guardian appointed by the will of the child's father and mother, and a guardian appointed or declared by a Court.</p> <p>f. "Court" means the Family Court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.</p> <p>g. "Father and Mother" mean, the biological father and mother of the child respectively, and do not include the adoptive father and mother.</p>
<p>ADOPTION BY CHRISTIANS</p> <p>Right to Adopt:</p>	<p>1. No adoption shall be made by a Christian except in accordance with the provisions contained in this chapter, and any adoption made in contravention of the said provisions shall be void.</p> <p>2. An adoption which is void shall neither create any right in the adoptive family in favour of the person adopted which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.</p>
<p>Requisites of a Valid Adoption:</p>	<p>No adoption shall be valid unless-</p> <p>i. the person adopting has the capacity and the right, to take in adoption;</p> <p>ii. the person giving in adoption has the capacity and the right to do so;</p> <p>iii. the person adopted is capable of being taken in adoption</p> <p>iv. the adoption is made in compliance with the other conditions</p>

	mentioned in this chapter.
Capacity of a Male Christian to take in Adoption:	<p>Any male Christian who is of a sound mind and is above 21 years of age has the capacity to take a son or daughter in adoption.</p> <p>Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife is dead or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be judicially separated, or has lived separately from the wife for two years prior to the date of adoption or to be of unsound mind.</p>
Capacity of a Female Christian to be taken in Adoption:	<p>Any female Christian who is of a sound mind and is above 21 years of age has the capacity to take a son or daughter in adoption.</p> <p>Provided that, if she has a husband living, she shall not adopt except with the consent of the husband, unless the husband is dead or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be judicially of competent jurisdiction to be judicially separated, or has lived separately from the husband for two years prior to the date of adoption or to be of unsound mind.</p>
Sec. 8. Person Capable of Giving in Adoption:	<p>1. No person except the father or mother or the guardian or orphanage institutions or Adoption Agency legally in charge of a child shall have the capacity to give the child in adoption</p> <p>Subject to the provisions of Section 10, the father, if alive, shall have the right to give in adoption, but he shall not exercise such right save with the express consent of the mother, unless the mother is dead or has ceased to be a Christian, or cannot be found, or has been declared by a court of competent jurisdiction to be judicially separated or to be of unsound mind and incapable of giving consent. The Court must be satisfied that the consent to give in adoption is freely given with full understanding of the situation and is unconditional.</p> <p>3. Subject to the provisions of Section 10 the mother, if alive, shall have the right to give in adoption, but she shall not exercise such right save with the consent of father, unless the father is dead or has ceased to be a Christian, or cannot be found, or has been declared by a court of competent jurisdiction to be judicially separated or to be of unsound mind and incapable of giving consent. The Court must be satisfied that the consent to give in</p>

	<p>adoption is freely given with full understanding of the situation and is unconditional.</p> <p>4. Where both the father and the mother are dead or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind, or where the parentage of the child is not known, the guardian of the child may, with the prior permission of the Court, give the child in adoption to any person, including the guardian himself or herself.</p>
<p>Grounds for Dispensing With parental Agreement to Give in Adoption:</p>	<p>The Court may dispense with parental agreement to give in adoption when one or more parent or guardian;</p> <ol style="list-style-type: none"> 1) Cannot be found or is incapable of giving agreement 2) Is withholding his or her agreement unreasonably 3) Has persistently failed without reasonable cause to discharge his or her parental responsibility towards the child. 4) Has abandoned or neglected the child. 5) Has seriously or persistently ill treated the child, physically or mentally or both. 6) In reaching any decision in relation to the adoption of a child a Court or Adoption agency, or orphanage or social welfare organization must be satisfied that: <ol style="list-style-type: none"> a) the adoption will be for the welfare of the child, due consideration for this purpose being given to the wishes of the child, having regard to the age and understanding of the child; and b) the applicant for permission to adopt has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption.
<p>Persons Who May be Adopted:</p>	<p>No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely;</p> <ol style="list-style-type: none"> 1) He or she has not already been adopted; 2) He or she has not been married 3) He or she has not completed the age of eighteen years

<p>Other Conditions for a Valid Adoption:</p>	<p>In every adoption the following conditions must be compiled with:</p> <p>(i) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least 21 years older than the person to be adopted;</p> <p>(ii) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least 21 years older than the person to be adopted;</p> <p>(iii) the intention to transfer the child from the family of its birth, or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption, is clearly expressed by an agreement executed by the parent or guardian giving and the parent taking in adoption and duly registered.</p>
<p>CONSEQUENCES OF ADOPTION</p> <p>Effect of Adoption:</p>	<p>(1) A child adopted under this Act shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of adoption and all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adopted family.</p> <p>Provided that -</p> <p>(a) the child can not marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;</p> <p>(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives, in the family of his or her birth;</p> <p>(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.</p>
<p>Determination of Adoptive Father and Mother in Certain Cases:</p>	<p>Where a Christian who has a spouse living and with whom he or she has not been judicially separated, adopts a child, that spouse shall be deemed to be the adoptive father or mother, as the case may be of the child.</p> <p>(1) Where a widower or an unmarried man adopts a child any wife, whom he subsequently marries, shall be deemed to be the adoptive mother of the adopted child.</p>

	(2) Where a widow or an unmarried woman adopts a child any husband, whom she subsequently marries, shall be deemed to be the adoptive father of the adopted child.
Cancellation/Renunciation Not Permitted:	No adoption, which has been validly made under this Act, can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.
Right of Adoptive Parents to Dispose of their Property:	Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her own property by <i>transfer inter vivos</i> or by will.
Protection of Adopted Child:	<p>If in the opinion of a police officer, social worker, social, legal or human rights organization or representative of local Church, any adopted child is treated with cruelty or is subjected to physical or mental abuse or undue verbal abuse or exploited in any other way by the adoptive parent or parents, such police officer, social worker, or representative of local church may make a report to the Court for initiating an inquiry regarding the conditions of the child.</p> <p>On receipt of a report under sub-section 1, the Court may call upon the parent to produce the child before it and the show case why the child should not be removed from the custody of such parent and placed in the care of a fit person or institution.</p>
MISCELLANEOUS Presumption as to Registered Documents Relating to Adoption:	Whenever any document registered under any law for the time being in force of the nature referred in this Act is produced before any Court, purporting to effect an adoption made under this Act and signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act, unless and until the contrary is proved.
Prohibition of Certain Payment:	<p>1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person under this Act and no person shall make or give or agree to make or give to any other person any payment or reward, the receipt of which is prohibited by the section.</p> <p>2) If any person contravenes the provisions of the sub-section 1 of this section, such person shall be punishable with imprisonment, which may extend to six months, or with fine or with both.</p>

Appeals:	<p>Any person aggrieved by an order made by the Court under any section may within thirty days from the date of such order, prefer an appeal to the District Court within the local limits of whose jurisdiction the adopted child ordinarily resides.</p> <p>Provided that the District Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.</p>
Revision:	<p>The High Court may, at any time, either of its own accord or an application received in this behalf, call for the record of any proceeding in which the Family Court or District Court has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit;</p> <p>Provided that the High Court Division shall not pass an order under this section prejudicial to any person without giving such person a reasonable opportunity of being heard.</p>

Amendment to Succession Act 1925 to accommodate law of adoption in it :

Inheritance of Adopted Child: Currently as there is no statutory recognition for adoption by Christians in Bangladesh, an adopted child cannot claim the right to succession. This position must be rectified, especially since adoption is recognized within the religious custom of Christians in Bangladesh. Therefore, Sections 3 and 37 of the Succession Act should read as follows:

Section 3: “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 deceased including descendants or kindred through legal adoption, in the order and according to the rules hereinafter contained in this chapter.”

Section 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.”

Mother to be Placed on Equal Footing as Father: As per existing provisions in the Succession Act the father of an intestate succeeds to the property to the exclusion of the mother. This discriminatory provision should be removed and both mother and father should be treated equally. Thus, Section 42 of the Succession Act should be amended to read as:

Section 42: “Where intestate’s father or mother or both are living- (1)If only the intestate’s father or mother is living, the surviving father or mother shall succeed to the property. (2) If both the father and mother of the intestate are living, the surviving father and mother shall succeed to the property in equal shares.”

Amendment of Section 494 of Penal Code to Recognise Annulment under Canon Law:

The Canon Law governing annulments of marriages of Bangladeshi Christians should be recognized by the State so that remarriage after declaration of nullity by the Canonical Court does not become an offence of bigamy under the civil law.

Amendment of Christian Marriages Act, 1872

The term “Native Christians” in sections 3,23,37,57,58,59 and 60 of the Act need to be replaced by “Bangladeshi Christians”.

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