

W.P.(MD)No.27615 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.10.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.27615 of 2025

K.Heerajohn

... Petitioner

Vs.

1.The District Registrar,
Madurai District, Madurai.

2.The Sub Registrar,
Melur East Sub Registrar Office,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the second respondent to register the Adoption Deed presented by the petitioner vide Temporary Acknowledgement Receipt No.TP/194478946/2024 representation dated 15.09.2025.

For Petitioner :Mr.M.Pandian

For Respondents :Mr.G.V.Vairam Santhosh
Additional Government Pleader



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ORDER

Heard both sides.

2.The writ petitioner got married to Kadhan Beevi. But the couple were not blessed with any child. The brother of the writ petitioner passed away leaving behind his wife and three children as his surviving legal heirs. One of the children is Mohammed Saleem aged about eight years. Amjad Beevi, the widowed sister-in-law of the writ petitioner has come forward to give the child in adoption to the writ petitioner and his wife who are willing to accept the same. An adoption deed dated 13.09.2025 was executed and presented for registration. The registering authority declined to register the document. Hence, this writ petition has been filed.

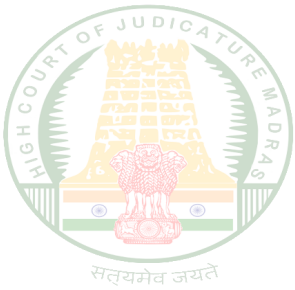
3.It is true that Islam, which the parties profess, does not recognise adoption. But the Juvenile Justice (Care and Protection of Children) Act, 2000 and its subsequent 2015 avatar enable adoption by willing parents *de hors* their religious background. The Hon'ble Supreme Court in the decision reported in **(2014) 4 SCC 1 (Shabnam Hasmi v. UOI)** held that the JJ Act, 2000, as amended, is an enabling legislation that gives a prospective parent the option of



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adopting an eligible child by following the statutory provisions. The statute gives choice to the person concerned. It is open to such a person either to adopt by following the JJ Act or choose not to do by following the dictates of the Personal law applicable to him. The effect of the decision is that a Christian or a Muslim, is free to adopt a child in terms of the statutory scheme even though Islam and Christianity do not recognise adoption. The case of Hindus is altogether different. Adoption is expressly permitted but it is subject to the provisions laid down in Hindu Adoptions and Maintenance Act, 1956. Section 56(3) of the JJ Act, 2015 makes it clear that its provisions shall not apply to adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956.

4.The learned counsel appearing for the petitioner relies on the order dated 17.06.2022 made in ***WP No.34069 of 2014 (N.Faritha Begam v. Joint Registrar No.2, Kallakurichi)***. In the said case, the writ petitioner wanted to give the child in adoption as she was unable to take care of the child. An adoption deed was executed but the registering authority declined to register the same by citing the writ petitioner's Personal law. The writ petition was allowed in the following terms :



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“23. As stated above, the JJ Act provides the mechanism for adoption of the child and one of the provisions contained therein pertains to the procedure to be followed in case of adoption. Specific reference can be had to Sections 41 (5) (a) and (b) of the JJ Act, 2000, which provides the necessary safeguards in case of adoption. Therefore, the only requirement for the respondent is the necessary clearance as per the provisions of the JJ Act to grant the seal of approval for the adoption deed so that the laudable object of safeguarding and uplifting children socially and reintegrating them into the society is achieved.

24. For the reasons aforesaid, the order passed by the respondent does not stand the test of judicial scrutiny and the provisions of the JJ Act would have a march over the Hindu Adoption & Maintenance Act as also the Muslim Personal Law and, therefore, the adoption of the child of the petitioner by the said Ruckminiammal is permissible. The petitioner is directed to submit necessary petition before the Child Welfare Committee, Villupuram District, within whose jurisdiction the respondent is situate, seeking necessary clearance for adoption within a period of two weeks from the date of receipt of a copy of this order and on submission of the said application, the Child Welfare Committee is directed to conduct necessary enquiry and pass appropriate orders with regard to granting permission within a period of six weeks thereafter and forward the same to the respondent who, on receipt of the said order, is directed to register the adoption deed submitted by the petitioner within a period of four weeks thereafter. On registration of the adoption deed, the petitioner is permitted to move before the appropriate forum and obtain appropriate orders for legalizing the adoption in the manner known to law. The writ petition is allowed with the aforesaid observations and directions. Consequently,



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connected miscellaneous petition is closed. There shall be no order as to costs.

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25.Registry is directed to circulate a copy of this order to all the Principal District Judges within the State and the Principal District Judges are directed to take appropriate steps for early disposal of adoption cases pending on their file, keeping in mind the decision of the Hon'ble Supreme Court in Shabnam Hashmi and George Christopher case (supra), so that the fruits of the benevolent legislation enures to the benefit of the children so sought to be adopted.”

5.I am not able to agree with the aforesaid views. However, I need not make a reference to a Larger Bench. This is because, the learned Judge had premised his entire order on the provisions of the JJ Act, 2000. Such an approach was taken because the writ petition was filed in the year 2014 though it was disposed of in the year 2022. Since the 2000 Act was repealed by Central Act 2 of 2016 (JJ Act, 2015), the procedure for adoption laid down in the subsequent Act alone will govern. Secondly, Section 56(3) of the new Act specifically states that JJ Act provisions will not apply to adoption of children made under the provisions of the Hindu Adoptions and Maintenance Act, 1956. Therefore, I cannot agree with the observation that JJ Act would have a march over the Hindu Personal law. Such an observation runs contrary to Section 56(3) of the JJ Act, 2015.



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6.The relevant provisions dealing with adoption of a relative's child

are Sections 56 & 57 of the JJ Act, 2015. While Section 56(1) of the JJ Act deals with adoption of orphan, abandoned and surrendered children, Section 56(2) talks about adoption of a child from a relative by another relative. It reads as follows :

“56...

(2)Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority”

Section 57 deals with eligibility of prospective adoptive parents. It reads as follows :

“57.(1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.

(2) In case of a couple, the consent of both the spouses for the adoption shall be required.

(3) A single or divorced person can also adopt, subject to fulfilment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.

(4) A single male is not eligible to adopt a girl child.

(5) Any other criteria that may be specified in the adoption regulations framed by the Authority.”



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In exercise of the statutory power, Adoption Regulations, 2017 have been

issued. These were superseded by the Adoption Regulations, 2022. The

relevant provision is as follows :

“54.In-country relative adoptions.-

- (1)The prospective adoptive parents shall register on the Designated Portal with the required documents as specified in the Schedule VI.
- (2) Consent of biological parents or permission of the Child Welfare Committee, as the case may be, shall be required as provided in the Schedule XIX or Schedule XXII respectively.
- (3) The consent of the child shall be obtained, if they are five years of age or above.
- (4) Affidavit of adoptive parents is required in cases of in-country relative adoptions in support of their financial and social status as specified in the Schedule XXIV.
- (5) The prospective adoptive parents shall receive due verification by the District Child Protection Unit.
- (6) The State Adoption Resource Agency shall further refer the case to the Authority for necessary approval following which pre-approval certificate shall be issued by the State Adoption Resource Agency as provided in the Schedule XXV.
- (7) If the prospective adoptive parents have a foreign passport, the case shall be referred to the Authority for expert advice.
- (8) After scrutiny of the application, the District Child Protection Unit shall file the application as provided in the Schedule XXX before the District Magistrate of the district where the child is habitually residing.



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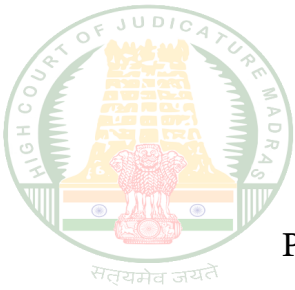


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(9) The District Child Protection Unit shall obtain a certified copy of the adoption order from the District Magistrate concerned and furnish a copy of the same online to the Authority and the adoptive parents through the Designated Portal.”

In 2017 Regulations, the prospective adoptive parents intending to adopt the child of a relative had to file an application in the competent court. But the role of court in this regard has been taken away. It is only the District Magistrate who has to issue the adoption order. An adoption process under the JJ Act has to follow the aforesaid procedure. Only when the adoption order is issued, the process becomes complete. Section 63 of the Act states that a child in respect of whom an adoption order is issued by the District Magistrate shall become the child of the adoptive parents as if he or she is a biological child. Section 63 of the Act is as follows :

“63.A child in respect of whom an adoption order is issued by the court, shall become the child of the adoptive parents, and the adoptive parents shall become the parents of the child as if the child had been born to the adoptive parents, for all purposes, including intestacy, with effect from the date on which the adoption order takes effect, and on and from such date all the ties of the child in the family of his or her birth shall stand severed and replaced by those created by the adoption order in the adoptive family:



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Provided that any property which has vested in the adopted child immediately before the date on which the adoption order takes effect shall continue to vest in the adopted child subject to the obligations, if any, attached to the ownership of such property including the obligations, if any, to maintain the relatives in the biological family.”

Section 1(4) of the Act reads as follows :

“1.....

(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including —

- (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;
- (ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.”

The stand of the All India Muslim Personal Law Board regarding adoption has been captured in Paragraph 12 of ***Shabnam Hashmi*** decision as follows :

“12. The All India Muslim Personal Law Board (hereinafter referred to as “the Board”) which has been allowed to intervene in the present proceeding has filed a detailed written submission wherein it has been contended that under the JJ Act, 2000 adoption is only one of the methods contemplated for taking care of a child in need of care and protection and that Section 41 explicitly recognises foster care, sponsorship and being looked after by after-care organisations as



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other/alternative modes of taking care of an abandoned/surrendered child. It is contended that the Islamic law does not recognise an adopted child to be on a par with a biological child. According to the Board, the Islamic law professes what is known as the “*kafala*” system under which the child is placed under a “*kafil*” who provides for the well-being of the child including financial support and thus is legally allowed to take care of the child though the child remains the true descendant of his biological parents and not that of the “adoptive” parents. The Board contends that the “*kafala*” system which is recognised by the United Nation's Convention of the Rights of the Child under Article 20(3) is one of the alternate system of child care contemplated by the JJ Act, 2000 and therefore a direction should be issued to all the Child Welfare Committees to keep in mind and follow the principles of the Islamic law before declaring a Muslim child available for adoption under Section 41(5) of the JJ Act, 2000.”

Article 15(3) of the Constitution of India reads as follows :

“Nothing in this Article shall prevent the State from making any special provision for women and children.”

7.A combined reading of Section 1(4) and 63 of the JJ Act, 2015 in the light of Article 15(3) of the Constitution of India leads me to conclude that it will prevail over Muslim Personal Law and an adopted child will have the same status of a biological child in all matters and an adopted child cannot be given a second class status.



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8.I need to take note of a decision made in ***WP(MD)No.18174 of***

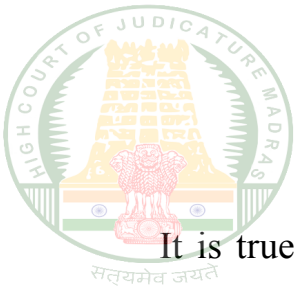
WEB 2018 (C.Pakkir Maideen and anr v. The Principal Secretary to Government.)

The learned Judge had directed as follows :

“The Inspector General of Registration, Government of Tamil Nadu shall issue necessary Circular to all the Registrars restraining them from registering any deed of adoption executed by any person irrespective of their religious without following mandatory provisions of their respective enactments.”

Section 17(1) of the Registration Act, 1908 catalogues the documents of which registration is compulsory. Sub-section (2) of Section 17 contains the list of documents to which Section 17(1) will not apply. Section 17(3) refers to deed of adoption. Section 18 refers to documents of which registration is optional. Section 18(f) of the Registration Act is to the effect that any other document not required by Section 17 to be registered may be registered under the Registration Act. A deed of adoption cannot therefore be refused registration. Section 16 of the Hindu Adoptions and Maintenance Act, 1956 reads as follows :

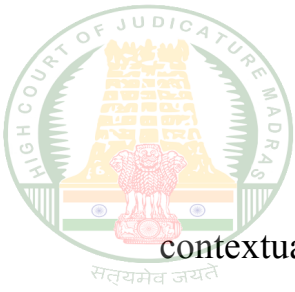
“16. Presumption as to registered documents relating to adoption.-Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”



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It is true that a deed of adoption as distinguished from an authority to adopt does not require registration. This is because it is not the deed, but the adoption itself, that creates the status of an adopted son and confers an interest in the property of the adoptive father (Mulla on the Registration Act, 15th Edition revised by Srinath Sridevan). The order made in ***WP(MD)No.18174 of 2018 (C.Pakkir Maideen and anr v. The Principal Secretary to Government)*** should, therefore, not be understood as applicable to adoption made under Hindu Personal law.

9.Coming to the facts on hand, it is seen that the parties are Muslims. They have to necessarily follow the procedure laid down in the JJ Act, 2015 and the Rules and Regulations framed thereunder. They cannot seek the easy option of executing an adoption deed and getting it registered. Law does not recognise the same. Since the adoption is to take place with the consent of the biological parents, the parties have to approach the District Child Protection Unit and the District Magistrate in the sequence set out in the 2022 Regulations. The requirement of obtaining the consent of the Child Welfare Committee would not arise if the biological parents of the child have given their consent. It is true that Regulation 54(3) talks about obtaining the consent of the child if aged five years or above. This requirement should be understood



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contextually. Section 61(1) of the JJ Act states that before issuing an adoption

order, the District Magistrate shall satisfy itself that the adoption is for the welfare of the child and due consideration has been given to the wishes of the child having regard to the age and understanding of the child. The text set out in the Regulations must be understood in the light of the provision found in the parent statute. JJ Act was enacted keeping in mind the best interest of children and their rehabilitation. Therefore, the authorities constituted under the Act will adopt a purposive approach. A child below 18 years cannot obviously give consent. So this expression “consent” must be understood as ascertaining its wishes. The authorities (District Magistrate and Child Protection Unit) are not bound to reject an application for adoption on the sole ground that the child which is aged five years or above did not give its consent. A holistic approach must be adopted. The interest of child alone should rank paramount. Right to adopt may not as on date has been recognised as a fundamental right within the scope of Article 21 of the Constitution but it is certainly a human right. The International Conventions have specifically recognised the right to found a family as human right. This would obviously include the right to adopt in terms of the statutory provisions.



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10.I decline to issue the Mandamus sought for. But the parties are permitted to adopt the procedure laid down in the Adoption Regulations, 2022. The Child Protection Unit shall complete the verification process within a period of three weeks after the application is uploaded in the portal. It is the duty of the officials concerned to ensure that uploading the application is a hassle-free process. Once the matter goes before the District Magistrate, the application shall be disposed of within a period of three weeks thereafter. Once an order of adoption is issued by the District Magistrate, it is unnecessary to get it registered. I take judicial notice of the prolonged delays in concluding the adoption process. I came across an editorial on THE HINDU dated 25.07.2025 titled “Should India relax its adoption procedures?”. It laments the long waiting periods in the current system. Some reports indicate that as many as 13 prospective parents are waiting for every single child declared legally free for adoption. This imbalance along with procedural delays means that many children spend their crucial early years in institutional care rather than in stable, loving homes. Such delays risk denying them the timely access to a nurturing environment essential for their overall well-being, development, and equitable life opportunities.



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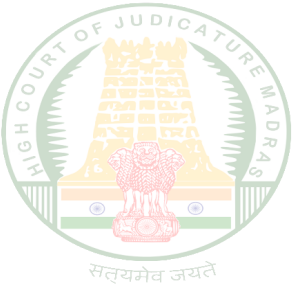
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11. Whether placed at birth or later in childhood, the intended goal of adoption has always been to facilitate a permanent and nurturing family in which a child's physical, emotional, relational, and educational needs are met. In many cases, adoption is also seen as an opportunity for children to recover and heal from adverse, and possible traumatic, experiences encountered prior to placement. Beyond these developmental issues, adoption also shapes a child's future lifestyle and access to opportunities including quality education, healthcare, and social mobility, that are often unavailable in institutional or foster care settings. Therefore, any delay in the adoption process postpones and deprives children of the formative experiences and opportunities that can significantly alter the trajectory of their lives. The authorities under the JJ Act are obliged to speed up the adoption process.

12. This writ petition is disposed of accordingly. No costs.

17.10.2025

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Internet : Yes / No
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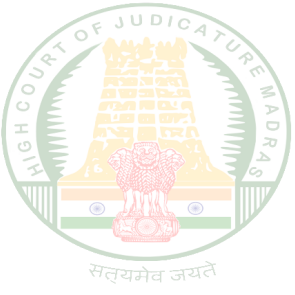


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To

- 1.The District Registrar,
Madurai District, Madurai.
- 2.The Sub Registrar,
Melur East Sub Registrar Office,
Madurai District.



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G.R.SWAMINATHAN, J.

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