

THE KERALA CHRISTIAN ADOPTION BILL

(Actof 2009)

An Act to amend and codify the law relating to adoptions among Christians in Kerala and matters connected therewith or incidental thereto.

BE it enacted in theYear of the Republic of India as follows:

CHAPTER I PRELIMINARY

1. *Short title and extent.*—(1) This Act may be called the Kerala Christian Adoptions Bill, 2009.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Application of Act.*—(1) This Act applies to any person, who is a Christian by religion having domicile in the State of Kerala.

3. *Definitions.*—(1) In this Act, unless the context otherwise requires,—

(a) ‘Christians’ mean persons professing the Christian religion;

Explanation.—A person who received baptism in accordance with the precepts of a Christian denomination shall be deemed to profess the Christian religion.

(b) “Court” means the Family Court or a District Court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

(c) “Father” and “mother” do not include an adoptive father, adoptive mother, step-father and step-mother.

(d) “Guardian” means a person having the care of the person of a child or of both his person and property and includes a guardian appointed by the will of the child’s father or mother; and a guardian appointed or declared by a court.

(e) “Minor” means a person who has not completed his or her age of eighteen years.

4. *Overriding effect of Act.*—Save as otherwise expressly provided in this Act.—

(a) Any text, rule or interpretation of Christian personal law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act.

(b) Any other law in force immediately before the commencement of this Act shall cease to apply to Christians in so far as it is inconsistent with any of the provisions contained in this Act.

CHAPTER II ADOPTION

5. Adoptions to be regulated by this Chapter.—(1) No adoption shall be made after the commencement of this Act by or to 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.

(2) An adoption, which is void, shall neither create any rights in the adoptive family in favour of any person, 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.

6. Requisites of a valid adoption.—No adoption shall be valid unless—

- (i) The person adopting has the capacity, and also the right, to take in adoption;
- (ii) The person giving in adoption has the capacity to do so;
- (iii) The person adopted is capable of being taken in adoption; and
- (iv) The adoption is made in compliance with the other conditions mentioned in this Chapter.

7. Capacity of a male Christian to take in adoption.—Any male Christian who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption; Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be of unsound mind. Capacity of a female Christian to take in adoption.—Any female Christian—

- (a) Who is of sound mind,
- (b) Who is not a minor, and
- (c) Who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption.

8. Persons incapable of giving in adoption.—(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (3) and sub section (4), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced

the world or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be of unsound mind.

(3) The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Christian or has been declared by a court of competent jurisdiction to be of unsound mind.

(4) Where both the father and mother are dead or have completely and finally renounced the world 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 or custodian of the child may give the child in adoption with the previous permission of the court to any person including the guardian or custodian himself.

(5) Before granting permission to a guardian or custodian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission 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 reward in consideration of the adoption except such as the court may sanction.

9. Persons who may be adopted.—No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:

- (i) He or she has not already been adopted;
- (ii) He or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
- (iii) He or she has not completed the age of eighteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of eighteen years being taken in adoption.

10. Other conditions for a valid adoption.—In every adoption, the following conditions must be complied with:

- (i) If the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (ii) If the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a daughter or sons daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (iii) If the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted.
- (iv) If the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted.
- (v) The same child may not be adopted simultaneously by two or more persons;
- (vi) The child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the

family of its birth or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up, to the family of its adoption:

Provided that the performance of any religious ceremony shall not be essential to the validity of adoption.

11. *Effects of adoption.*—An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes including matters relating to succession with effect from the date of the adoption and from such date 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 adoptive family:

Provided that—

- (a) The child cannot 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;
- (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;
- (c) The adopted child shall not divest any person of any estate, which vested in him or her before the adoption.

12. *Right of adoptive parents to dispose of their properties.*—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 property by transfer *inter vivos* or by will.

13. *Determination of adoptive mother in certain cases.*—(1) Where a Christian who has a wife living adopts a child, she shall be deemed to be the adoptive mother.

(2) Where a widower or a bachelor adopts a child, any wife whom he subsequently married shall be deemed to be the step-mother of the adopted child.

(3) Where a widow or an unmarried woman adopts a child, any husband whom she married subsequently shall be deemed to be the step-father of the adopted child.

14. *Valid adoption not to be cancelled.*—No adoption which has been validly made can be cancelled by the adoptive father or mother of 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.

15. *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.

16. *Prohibition of certain payments.*—(1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, 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 this section.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment, which may extend to six months, or with fine, or with both.

(3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorized by the State Government in this behalf.

17. Procedure for adoption.—Where a minor child is given in adoption by the father or mother or the guardian, as the case may be, on being satisfied that it is for the welfare of the minor that the child is given in adoption, the Court shall accept the request for adoption without insisting upon further procedural formalities and the application shall be disposed of within thirty days from the date of application as far as possible.

18. Power of State Government to make rules.—The State Government may make rules for carrying out the purposes of this Act without prejudice to the generality of the provisions of this Act. Until such rules are framed, the general procedure followed in applications under the Guardians and Wards Act (Central Act 8 of 1890) may be followed by the Court.

CHAPTER IV

SAVINGS

19. Savings.—(1). Where a person had been appointed as guardian under the provisions of the Guardians and Wards Act, 1890 (Central Act 8 of 1890), and where such order of appointment was made before the commencement of this Act and the parties intended that such appointment should have all the effects of an adoption, the appointment made as such guardian be treated as an order of valid adoption.

(2) Nothing contained in this Act shall affect any adoption made before the commencement of this Act.