

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

INDIAN ADOPTION PETITION NO.31 OF 2009  
WITH  
JUDGE'S ORDER NO.298 OF 2009

In the matter of adoption of Payal @ Sharinee Vinay Pathak

Vinay Pathak and his wife  
Sonika Sahay @ Pathak  
Both residents of Mumbai, Hindu  
Indian Inhabitants, having permanent  
address at 1402, A Wing, Garden Estate,  
Laxmi Nagar, Goregaon Link Road,  
Goregaon (West), Mumbai 400 064. ..Petitioners.

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Mr. Vishal Kanade with Mr. Tanmaya Nirmal i/b Mahimtura and Company  
for the Petitioners.

Mr. O. Harindran, representative of ICSW present.

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**CORAM : DR. D.Y. CHANDRACHUD, J.**

16<sup>th</sup> September, 2009.

**JUDGMENT :**

**The Issue**

1. The Petition before the Court raises an issue of the interpretation of the Hindu Adoptions and Maintenance Act, 1956 and the Juvenile Justice

(Care and Protection of Children) Act, 2000. The Hindu Adoptions and Maintenance Act, 1956 amends and codifies the law relating to adoptions and maintenance among Hindus and specifies conditions for valid adoption. One of them is that if the adoption is of a daughter, the father or mother who wish to adopt the child must not have a Hindu daughter (or a son's daughter) living at the time of adoption. Parliament enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 to regulate the interface of the law with children in conflict with the law and to provide for the rehabilitation and social integration of orphaned, abandoned or surrendered children. Adoption is one of the techniques recognized by Parliament to facilitate the object of rehabilitation. The Juvenile Justice Act does not incorporate a restrictive condition foreclosing the right of parents who have a child to adopt another child of the same gender. The Act recognises the right of parents to adopt children irrespective of the number of living biological sons or daughters.

2. The issue which arises before the Court is as to whether a Hindu couple governed by the Hindu Adoptions and Maintenance Act, 1956,

with a child of their own can adopt a child of the same gender under the provisions of the Juvenile Justice Act of 2000. The issue raised presents significant ramifications on the entitlement of individuals and couples across the spectrum of religious and social groups in India to adopt children. The Juvenile Justice Act, 2000 is legislation of a secular nature. The human tragedies of orphaned and abandoned children straddle social and religious identity. The urge to adopt is a sensitive expression of the human personality. That urge again is not constricted by religious identity. The Court must harmonise personal law with secular legislation.

### **The facts**

3. The First and Second Petitioners who are Hindus married on 29<sup>th</sup> June, 2001. Both of them are actors by profession, though the Second Petitioner, with two young children to look after, is on a sabbatical. The First Petitioner was born on 27<sup>th</sup> July, 1967 while the Second Petitioner was born on 19<sup>th</sup> January, 1977. Both of them have a daughter, who was born on 4<sup>th</sup> February, 2003.

4. In a Guardianship Petition<sup>1</sup> instituted under the Guardians and Wards Act, 1890 before this Court on 13<sup>th</sup> April, 2005 the Petitioners sought their appointment as guardians of a female child. The child was born on 12<sup>th</sup> November, 2004 to a mother whose identity is in the interests of her privacy not necessary to be disclosed here. The mother and her spouse executed a declaration on 16<sup>th</sup> November, 2004, four days after the child was born, recording the circumstances in which they had decided to surrender the child at the nursing home where the child was born. The declaration stated that the mother and her spouse had been counseled by a social worker at Bal Vikas which is a placement agency recognised by the Government of India and that they had voluntarily agreed to surrender the child. At the foot of the declaration, a Scrutiny officer of the Indian Council for Social Welfare made an endorsement of having counseled the parents of the contents of the document and of making the mother aware of the fact that she had a period of two months to reclaim the child, failing which the child may be placed either in adoption or guardianship. The parents have not come forth to claim the child. An affidavit was filed before this Court on 13<sup>th</sup> April, 2005 by the

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1 Indian Guardianship Petition 83 of 2001.

managing trustee of Bal Vikas certifying the facts and recording an opinion that it would be in the interest of the child to place her under guardianship.

5. By an order of Hon'ble Mr. Justice A.M. Khanwilkar dated 8<sup>th</sup> June, 2005 the Petitioners were appointed guardians of the child. The child has since lived with the Petitioners for over four years. A petition has been filed seeking a declaration that the Petitioners are the adoptive parents of the child with consequential rights, privileges and responsibilities under the law.

### **The Hindu Adoptions and Maintenance Act, 1956**

6. The Hindu Adoptions and Maintenance Act, 1956 was enacted by Parliament "to amend and codify the law relating to adoptions and maintenance among Hindus". Section 4 gives overriding force and effect to the Act over any text, rule or interpretation of Hindu law or any custom or usage prevalent before the commencement of the Act and over any other law in force immediately before the commencement of the Act

insofar as it was inconsistent with the provisions of the legislation. Section 5 stipulates that no adoption shall be made after the commencement of the Act by or to a Hindu except in accordance with the provisions contained in the Chapter. Any adoption made in contravention of the provisions is void. Consequently, under sub section (2), any adoption which is void does not create any right in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption. The requisites of a valid adoption are specified in Section 6. Among them is the requirement that the person adopting must have the capacity and the right to take in adoption while the person adopted must be capable of being taken in adoption. Sub section (4) of Section 9 contains a reference to children who have been abandoned by providing that in such a case the guardian of the child is empowered to give the child in adoption with the previous permission of the Court to any person including the guardian himself. For a person to be adopted, Section 10 provides that (i) the person should be a Hindu; (ii) the person should not already have been adopted; (iii) the person should not have been married unless there is a custom or usage to the

contrary; (iv) the person should not have completed the age of fifteen, unless there is a custom or usage to the contrary.

7. Section 11 provides that in every adoption certain conditions must be complied with. Clauses (i) and (ii) of Section 11 are as follows :

“(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu 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 Hindu daughter or son’s daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption.”

What these clauses stipulate is a prohibition on the adoption of a child of the same gender where the adoptive father or mother already have a child living at the time of the adoption. If the adoption is of a daughter, the adoptive father or mother must not have a Hindu daughter or a son’s daughter living at the time of adoption. Where the adoption is of a son, the condition is more stringent because the adoptive father or mother should not have a Hindu son, son’s son or son’s son’s son living.

### **Constitutional provisions**

8. Article 15 of the Constitution empowers the State, in Clause (3), to make special provisions for women and children. Article 39 is part of the Directive Principles of State policy. Clause (e) of Article 39 directs the State in framing its policies to secure that the tender age of children is not abused. In clause (f) the State has to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity so as to ensure that childhood and youth are protected against exploitation and against moral and material abandonment. By Article 45 the State has to endeavour to provide early childhood care and education for all children until they complete the age of six. Article 47 requires the State to raise levels of nutrition. Under Article 51-A it is the fundamental duty of every citizen who is a parent or guardian to provide opportunities for education to his or her child or, as the case may be, ward between the age of six and fourteen.

9. Fundamental as they are in the governance of the country, these provisions are part of a sensitive vision of the founding fathers. The

human tragedy of the exploitation of children, of child abuse and of malnutrition among children was in contemplation as these provisions were drafted. Those provisions are a composite part of our constitutional ethos which places freedom and dignity as one of the foremost values of governance in civil society. Freedom and dignity of the young must count above all. The young are amongst the most vulnerable to disease and deprivation which follow upon abandonment and isolation. Poverty has no religion.

### **The convention on the Rights of the Child**

10. India ratified the Convention on the Rights of the Child on 11<sup>th</sup> December, 1992. Article 3 of the Convention provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. All States have undertaken to ensure to children such protection and care as is necessary for their well being and to take all appropriate legislative and administrative measures. Article 20 of the Convention provides that

a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the State. Such care could include foster placement and adoption amongst other alternatives. Under Article 21 States who are parties to the Convention recognized that the system of adoption shall ensure that the best interests of the child shall be the paramount consideration.

### **The Juvenile Justice Act, 2000**

11. The Juvenile Justice (Care and Protection of Children) Act was enacted in 2000, “to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection”. The object of the Act is to provide for “care, protection and treatment by catering to their development needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation”. The Preamble to the Act makes reference to several constitutional provisions which have a bearing on the welfare of children and to the obligation assumed

by India as a responsible member of the international community.

12. Parliament enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 to effectuate constitutional provisions and fulfill India's international obligations. The Act as now enacted is intended to provide effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juveniles and children. The Act was amended in 2006 in order to effectuate the beneficial objects of the legislation and in order to remove the anomalies which had arisen in the implementation of the Act.

### **Rehabilitation and Social Integration**

13. Chapter IV of the Juvenile Justice Act is entitled "Rehabilitation and Social Reintegration". Section 40 of the Act provides that rehabilitation and social reintegration of a child shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship and (iv) sending the child to an after care organisation. Sub section (1) of Section 41 provides that the

primary responsibility for providing care and protection to a child is to be that of his or her family. By sub section (2) adoption is to be resorted “for the rehabilitation of children who are **orphaned, abandoned or surrendered**” through such mechanism as may be prescribed. Sub section (3) of Section 41 empowers the Court to give children in adoption subject to satisfaction of investigations having been carried out, as are required for giving children in adoption. Sub section (4) empowers the State Government to recognize one or more of its institutions or voluntary organizations in each district as specialised adoption agencies for the placement of orphaned, abandoned or surrendered children for adoption. Sub section (5) of Section 41 contains the following stipulations for offering children in adoption :

“(5) No child shall be offered for adoption -

(a) until two members of the Committee declare the child legally free for placement in the case of abandoned children,

(b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and

(c) without his consent in the case of a child who can understand and express his consent.”

14. Sub section (6) emphasizes that the Court may allow a child to be given in adoption (a) to a person irrespective of marital status; or **(b) to parents to adopt a child of the same sex irrespective of the number of living biological sons or daughters**; or (c) to childless couples. These provisions of the Juvenile Justice Act must be read in the context of some of the definitions. The expression “adoption” is defined by Clause (aa) of Section 2 as follows :-

“(aa) ‘adoption’ means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.”

15. Section 2(d) defines the expression “child in need of care and protection”. Clause (v) includes within this category a child who does not have a parent and whom no one is willing to take care of or whose parents have abandoned or surrendered the child.

16. Rules have been framed under the Act and Rule 33 provides for rules for implementing Chapter IV which deals with rehabilitation and social integration.

### **Harmonising the Act of 1956 and the Juvenile Justice Act, 2000**

17. The Hindu Adoptions and Maintenance Act, 1956 regulates adoptions by or to a Hindu. The Act spells out requisites of valid adoptions, defines capacities for men and women professing the Hindu religion to take in adoption and to give in adoption, for persons who may be adopted and the conditions for adoption. The Act enunciates consequences or effects of a valid adoption in law. The Act establishes rules of general applicability to Hindus in specific areas of family law – adoption and maintenance. The Juvenile Justice (Care and Protection of Children) Act, 2000 is beneficent secular legislation. The Act makes special provisions for a limited sub class of children – those juveniles in conflict with law and children in need of care and protection. Adoption under the Act of 2000 is an instrument of legislative policy to rehabilitate and provide social integration to children who are in need of care and protection. The Preamble to the Act emphasizes that the legislation was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection.

Rehabilitation and social integration of orphaned, abandoned and surrendered children is a matter of legislative regulation by the Juvenile Justice Act. Adoption is a technique contemplated by the law in order to facilitate rehabilitation and reintegration of children of a particular class governed by Chapter IV. The mission of the law is to provide special rules to govern the adoption of a narrow sub class of children namely, those who are orphaned, surrendered or abandoned. In construing the provisions of the Juvenile Justice Act the effort of the Court must be to ensure that the beneficent object with which the legislation was enacted must be facilitated and furthered. Beneficial legislation, it is a trite principle of interpretation, must be construed liberally.

18. The provisions of the Juvenile Justice Act came up for consideration before a Constitution bench of the Supreme Court in **Pratap Singh v. State of Jharkhand**<sup>1</sup>. The Supreme Court held that the Act was not only beneficial legislation but that it was also remedial in character. The Constitution bench held that the statute must be construed in a manner that would make it effective and operative on the principle of *ut res magis*

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<sup>1</sup> (2005) 3 SCC 551.

*valet quam pereat*. A similar approach had been adopted by a Bench of three Learned Judges of the Supreme Court in **Umesh Chandra v. State of Rajasthan**<sup>2</sup>. The Rajasthan Children Act, 1970 was regarded as a piece of social legislation which the Court held, would have to be “liberally and meaningfully construed”.

19. Adoption is a facet of the right to life under Article 21 of the Constitution. The right to live that is asserted is, on the one hand, the right of parents and of individuals - women and men - who seek to adopt a child to give meaning and content to their lives. Equally significant, in the context of the Juvenile Justice Act, 2000, the right to life that is specially protected is the right of children who are in need of special care and protection. The legislature has recognized their need for rehabilitation and social integration to obviate the disruptive social consequences of destitution, abandonment and surrender. There is legislative recognition of adoption as a means to subserve the welfare of orphaned, abandoned and surrendered children.

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<sup>2</sup> (1982) 2 SCC 202.

20. The Hindu Adoptions and Maintenance Act, 1956 and the Juvenile Justice Act, 2000 must be harmoniously construed. The Hindu Adoptions and Maintenance Act, 1956 deals with conditions requisite for adoption by Hindus. The Juvenile Justice Act of 2000 is a special enactment dealing with children in conflict with law and children in need of care and protection. While enacting the Juvenile Justice Act 2000 the legislature has taken care to ensure that its provisions are secular in character and that the benefit of adoption is not restricted to any religious or social group. The focus of the legislation is on the condition of the child taken in adoption. If the child is orphaned, abandoned or surrendered, that condition is what triggers the beneficial provisions for adoption. The legislation seeks to ensure social integration of such children and adoption is one method to achieve that object. The religious identity of the child or of the parents who adopt is not a precondition to the applicability of the law. The law is secular and deals with conditions of social destitution which cut across religious identities. The legislature in its wisdom clarified in sub section (6) of Section 41 that

the Court may allow a child to be given in adoption to parents to adopt a child of the same sex irrespective of the number of living biological sons or daughters. This provision is intended to facilitate the rehabilitation of orphaned, abandoned or surrendered children. The condition must apply to all persons irrespective of religious affiliation who seek to adopt children of that description. The object of rehabilitation and providing for social reintegration to orphaned, abandoned or surrendered children is a matter of high legislative policy. It is in effectuation of that policy that the legislature has stipulated that adoption of such a child must proceed irrespective of the marital status of a person taking in adoption and irrespective of the number of living biological children of the parents seeking adoption. Consequently, where the child which is sought to be adopted falls within the description of an orphaned, abandoned or surrendered child within the meaning of sub section (2) of Section 41 or a child in need of care and protection under clause (d) of Section 2, the provisions of the Juvenile Justice (Care and Protection of Children) Act 2000 must prevail. In such a case the embargo that is imposed on adopting a child of the same sex by a Hindu under clauses (i) and (ii) of

Section 11 of the Hindu Adoptions and Maintenance Act, 1956 must give way to the salutary provisions made by the Juvenile Justice Act. Where, however, the child is not of a description falling under the purview of Chapter IV of the Juvenile Justice Act, 2000, a Hindu desirous of adopting a child continues to be under the embargo imposed by clauses (i) and (ii) of Section 11 of the Act of 1956. If the two pieces of legislation, both of which are enacted by Parliament are harmoniously construed, there is no conflict of interpretation.

**Resolution of Conflicting provisions - the alternate hypothesis**

21. Alternatively, even if there were to be a conflict between the provisions of the Hindu Adoptions and Maintenance Act, 1956 and the Juvenile Justice Act of 2000, it is the latter Act which would prevail. This is on the well settled principle that when there are two special Acts dealing with the same subject matter, the legislation which has been enacted subsequently should prevail. The Supreme Court applied this principle in the context of a conflict between the Companies Act 1956 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993

in its decision in **Allahabad Bank v. Canara Bank**<sup>3</sup>. Where a later enactment does not expressly amend (whether textually or indirectly) an earlier enactment which it has power to override, but the provisions of the later enactment are inconsistent with those of the earlier, the later by implication amends the earlier so far as is necessary to remove the inconsistency between them.

**Bennion on Statutory Interpretation (5th ed., 2008) § 80: Implied amendment.**

22. Here, the 1956 Act prohibits a Hindu from adopting a child when he or she already has a child of the same gender, and the 2000 Act creates a general right to adopt abandoned, surrendered, or orphaned children. While there is a presumption against implied amendment or repeal under Indian law, the Supreme Court has recognized that “this presumption may be rebutted where the inconsistency cannot be reconciled.” *Municipal Council, Palai v. T.J. Joseph*<sup>4</sup>. If the 2000 Act is held to be inconsistent with the 1956 Act, when passing the later Act Parliament impliedly

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3 (2000) 4 SCC 406.

4 AIR 1963 SC 156,1, 1564.

amended the Hindu Adoptions and Maintenance Act, 1956, to permit adoption of children in the specified subclass, irrespective of whether a person has children of the same sex.

23. *Special laws versus general laws*: Courts examining implied amendments of earlier Acts distinguish special laws from general laws. Under Indian law, an Act is only special or general relative to other Acts; it may be general in some situations but special in others. “There can be a situation in law where the same statute is treated as a special statute vis-à-vis one legislation and again as a general statute vis-à-vis yet another legislation.” *Allahabad Bank v. Canara Bank (supra)* . “In determining whether a statute is a special or general one, the focus must be on the principal subject matter plus the particular perspective.” *Life Ins. Co. of India v. D.J. Bahadur*<sup>5</sup>.

24. In the *LIC* case, the Supreme Court considered a conflict between the Industrial Disputes Act and the Life Insurance Corporation Act. The Court concluded that the ID Act was a special Act relative to the LIC Act

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<sup>5</sup> AIR 1980 SC 2181, 2200.

under the circumstances of the case. *Id.* “The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionality for the nature of industrial disputes coming within its ambit.” *Id.* “From alpha to omega, the ID Act has one special mission — the resolution of industrial disputes through specialized agencies according to specialized procedures and with special reference to the weaker categories of employees coming within the definition of workmen.” *Id.*

25. Here, the Hindu Adoptions and Maintenance Act, 1956, establishes rules of general applicability in Hindu family matters, including rules for adoption. Considered against the entire swathe of Personal Law in India, it is a special act, providing rules applicable only to Hindus. In the field of adoption, however, it provides general principles of application to Hindus.

26. The Juvenile Justice Act, 2000, establishes specific rules for the adoption of a limited subclass of persons—abandoned, surrendered, or

orphaned children. The special provision modifies the operation of the general rule without completely overriding it: in general, Hindus cannot adopt a child of the same gender as an existing child, but there is a special rule in the case of abandoned, surrendered, or orphaned children. As in *Bahadur*, here the later act “has one special mission” — establishing rules of adoption for a limited subclass of persons. Therefore, in these circumstances, the Juvenile Justice Act is a special act that overrides the general provisions of the Hindu Adoptions and Maintenance Act.

27. The Juvenile Justice Act, 2000, is best viewed as impliedly amending the conflicting provision of the Hindu Adoptions and Maintenance Act, rather than repealing it. The general prohibition of the earlier Act remains in force; the later Act simply creates an exception in the case of abandoned children.

28. *Arguments to the contrary:* There are three possible submissions which can be urged to the contrary. First, the Hindu Adoptions and

Maintenance Act applies only to Hindus; it does not limit the ability of Muslims, Christians, Parsis and other communities to adopt children of the same sex as their existing children. Thus it would be possible to give effect to the Juvenile Justice Act, 2000, by holding that Sections 11(i) and (ii) are applicable to Hindu adoptions because the conflicting section of the Hindu Adoptions and Maintenance Act remains operable.

29. Second, it is possible to view the Hindu Adoptions and Maintenance Act as a special act and the Juvenile Justice Act as a general act, in which case, under general principles of statutory interpretation, the second (general) act would not impliedly amend the first (special) act. *See generally Bennion § 88: Generalia Specialibus Non Derogant.* The Hindu Adoptions and Maintenance Act establishes rules for Hindus, a subclass of the overall population; since its provisions are not applicable to all Indians, it is a special act in some respects. On the other hand, the Juvenile Justice Act is a law of general applicability, in so far as it applies without respect to religious affiliation, and any child can be abandoned, surrendered, or orphaned.

30. Third, the Juvenile Justice Act contains language expressly repealing some conflicting statutes, but not statutes that conflict with the adoption provisions. Section 1(4) of the Juvenile Justice Act, 2000 provides that :

“1(4) Notwithstanding anything, contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.”

**The Act expressly overrides a limited class of conflicting laws.**

31. None of the three criticisms is ultimately persuasive. The first criticism fails to focus on “the principal subject matter plus the particular perspective.” *Life Ins. Co. of India v. D.J. Bahadur (supra)*. The principal subject matter of the Juvenile Justice Act is adoption of a particular sub-class of children, while the Hindu Adoptions and Maintenance Act provides only general adoption principles applicable to Hindus. The focus of the 2000 Act is on the status of the child. Hence, in the adoption of surrendered, abandoned or orphaned children, Section

41(6)(b) lifts the restrictive condition imposed by Section 11(i) and (ii) of the 1956 Act. For children falling in the particular class, the Act of 2000 is a special provision.

32. The second criticism fails because, even if the Juvenile Justice Act is better viewed as a general act, labeling an act “general” or “special” is not necessarily outcome-determinative. As the Supreme Court has explained: “[T]here is no rule of law to prevent repeal of a special by a later general statute and, therefore, where the provisions of the special statute are wholly repugnant to the general statute, it would be possible to infer that the special statute was repealed by the general enactment.” *Municipal Council, Palai v. T.J. Joseph, supra.*

33. The third criticism is also not fatal. The conditions requiring implied repeal remain: two laws, one earlier and one subsequent, contain conflicting provisions that cannot both receive effect. However, it would be necessary to emphasize that the provisions of Section 11(i) and (ii) of the Hindu Adoptions and Maintenance Act, 1956 can be harmonised with

those of the Juvenile Justice Act, 2000. The later Act of 2000 carves out special provisions for dealing with the rehabilitation and integration of juveniles in conflict with law and children in need of special care and protection. Adoption of surrendered, abandoned and orphaned children is the mission of the law. That mission has to be achieved by allowing the adoption of children within the subclass, irrespective of the number of living biological children of the same gender. To that extent there is an exception to the embargo under clauses (i) and (ii) of Section 11 of the Act of 1956. The embargo is to that extent lifted.

### **The Conclusion on facts**

34. The Petitioners profess the Hindu religion. They already have a biological daughter. They have obtained guardianship under the provisions of the Guardian and Wards Act, 1890 of a minor child of the same sex. The child of whom they assumed guardianship did fit the description of a child in need of care and protection under Section 2(d) (v) of the Juvenile Justice Act, 2000 and of a surrendered child under sub section (2) of Section 41. The Petitioners were eligible to adopt the child

under the Juvenile Justice Act, 2000 and the order of guardianship does not destroy that entitlement. The child was a surrendered child and was legally free for adoption. The substance and effect of the procedures prescribed under the Juvenile Justice (Care and Protection of Children) Act, 2000 have been complied with. Both the children are pursuing their education in the Kindergarten Class of a nursery school at Vile Parle. The report of the school has been placed on the record. There is abundant material before the Court for the Court to conclude that it is manifestly in the interest and welfare of the child that the petition for adoption should be allowed. The child has already been with the Petitioners for a period in excess of four years.

35. The Petition is accordingly disposed of in terms of the reliefs sought before the Court. There shall be a declaration that the Petitioners are the adoptive parents of Sharinee with all the rights, privileges, responsibilities and consequences under the law.

36. There shall be an order in terms of the Judge's Order separately

signed.

37. Before concluding this Court would wish to record its appreciation of the able assistance rendered to the Court by Mr. Vishal Kanade, learned counsel appearing on behalf of the Petitioners.

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