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## Case Comment: Passport Issuance and Adoption: Jigna v Union of India

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### INTRODUCTION

The case of Jigna v Union of India, as adjudicated before the esteemed bench comprising A. S. Oka and G. S. Kulkarni, JJ., represents a pivotal legal challenge concerning passport issuance procedures vis-à-vis the legal status of a minor child following adoption. The petitioner, Jigna Mahesh Dedhia, challenged the rejection of her minor son's passport application by the Passport Officer. Central to the dispute is the Passport Officer's insistence on divulging the biological father's name, notwithstanding the legal adoption of the child by his stepfather, Mahesh Dhanji Dedhia.

### FACTS

The petitioner applied to the passport department for her underage son's passport under the name Master Josh Mahesh Dedhia. Following her remarriage, her husband legally adopted her son from her previous marriage, resulting in a name change from Master Jash Jayesh Gala to Master Jash Mahesh Dedhi to include the adoptive father's name. Despite this legal adoption,

the Passport Officer issued a letter dated 06.05.2014, demanding that the petitioner disclose the name of the biological father of their son.

## ISSUES

1. Whether the instructions of the Ministry of External Affairs, New Delhi are enforceable in this case.
2. Whether the respondent was legally bound to issue the passport even if the directions therein letter dated 06.05.2014 were not complied with.

## CONTENTIONS FROM THE PETITIONER

The Counsel for the petitioner contended that the letter dated 06.05.2014, issued by the Passport Officer was without application of mind as it disregarded the validity of the consent decree of divorce and the Deed of Adoption.

## CONTENTIONS FROM THE RESPONDENT

The respondent's counsel asserted that the Passport Officer is obligated to adhere to the directives of the Ministry of External Affairs in New Delhi. Therefore, the requirement to reveal the biological father's name in order to proceed with the application for the petitioner's son's passport was reasonable.

## RULE

- Section 5(1)<sup>1</sup> of the Act says that adoption made by/to a Hindu after the commencement of the Act in contravention of its provisions is void.<sup>2</sup>
- Section 6<sup>3</sup> of the Act enumerates the conditions and requisites of a valid adoption as follows:

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<sup>1</sup> Indian Evidence Act 1872, s 5(1)

<sup>2</sup> *Golak Chandra v Krutibas Rath* AIR 1979 Ori 205

<sup>3</sup> Indian Evidence Act 1872, s 6

- The person adopting must have the rights and capacity to adopt<sup>4</sup> as underlined in Sections 7 and 8.<sup>5</sup>
- The person giving in adoption must have the capacity to do so<sup>6</sup> as specified in Section 9.<sup>7</sup>
- The person to be adopted must be capable of the same<sup>8</sup> as stressed in Section 10<sup>9</sup>
- The other conditions listed in Section 11<sup>10</sup> must be adhered to.<sup>11</sup>
- Section 15<sup>12</sup> says that valid adoption under this Act cannot be revoked. The ties with the natural family end and the child, now being a part of the adoptive family has all rights at par with the biological child.<sup>13</sup>
- Section 16<sup>14</sup> is in line with the Evidence Act, 1872 and states that unless disproved, the Court shall presume the adoption to be in compliance with the provisions of the Act on submission of the registered documents related to adoption before the Court.<sup>15</sup>
- Articles 14<sup>16</sup> and 21<sup>17</sup> guarantee the right to equality and the right to life and personal liberty respectively.

## ANALYSIS

### 1. Whether the instructions of the Ministry of External Affairs, New Delhi are enforceable in this case

In accordance with directives from the Ministry of External Affairs in New Delhi, a child's relationship with his biological parents remains intact notwithstanding the parents' divorce.

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<sup>4</sup> *Vijayalakshamma v B.T. Shankar* (2001) 4 SCC 558

<sup>5</sup> Indian Evidence Act 1872, s7

<sup>6</sup> *Dhanraj v Suraj Bai* (1975) 2 SCC 251

<sup>7</sup> Indian Evidence Act 1872, s 9

<sup>8</sup> *Salekh Chand v Satya Gupta* (2008) 13 SCC 119

<sup>9</sup> Indian Evidence Act 1872, s 10

<sup>10</sup> Indian Evidence Act 1872, s 11

<sup>11</sup> *Kondiba Rama Papal v Narayan Kondiba Papal* (1991) 2 SCC 218

<sup>12</sup> Hindu Adoptions and Maintenance Act 1956, s 15

<sup>13</sup> *Gajula Ratnaji v Boppana Veera Prabhavathi* (2006) 2 SCJ 293

<sup>14</sup> Indian Evidence Act 1872, s 16

<sup>15</sup> *Mst. Deu and Ors v Laxmi Narayan and Ors* (1998) 8 SCC 701

<sup>16</sup> Constitution of India 1950, art 14

<sup>17</sup> Constitution of India 1950, art 21

Furthermore, the mention of a stepfather or stepmother in the passport of children from a previous marriage is omitted.

Further, the column of father or mother cannot be left blank, thereby directing disclosure of the biological parents' names in the application form.

Nevertheless, wherein the Court appoints the stepfather or stepmother, the stepparents' names can be mentioned as legal guardians. Fundamental rights protected under Article 14 of the Constitution,<sup>18</sup> which was inspired by Article 7 of the 1948 Universal Declaration of Human Rights, guarantees 'substantive equality' and 'distributive justice' in India. The right to equality is recognized as one of the Constitution's basic features.<sup>19</sup>

The directives issued by the Ministry of External Affairs in New Delhi establish an arbitrary differentiation between the court-appointed adoptive parent or guardian and the adoption conducted in accordance with the Hindu Adoptions and Maintenance Act, 1956. This practice violates Article 14 of the Constitution, which guarantees the fundamental right to equality. Moreover, the act of refusing to grant the passport solely on the basis of withholding the biological father's name rendered null and void the legally binding adoption deed and eradicated the adoptive father's newly acquired status, thus ultra vires the Constitution.<sup>20</sup> Therefore, the directives issued by the Ministry of External Affairs, New Delhi, lack enforceability in the present circumstance.

## **2. Whether the respondent was legally bound to issue the passport even if the directions therein letter dated 06.05.2014 were not complied**

In the present matter, the biological father of the Petitioner's son, Jayesh Vallabhji Gala, had permanently relinquished his rights to the son, Master Jash qua the petitioner, pursuant to the consent order of divorce dated 28.01.2005. The decree reflected Gala's promise that he would not assert any claim concerning the matter, even if the petitioner remarried.

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<sup>18</sup> Constitution of India 1950, art 14

<sup>19</sup> *Indra Sawhney v Union of India* (2000) 1 SCC 168

<sup>20</sup> *John Ebenezer v The Regional Passport Officer* WP (MD) No 12285/2015

Gala subsequently executed a Deed of Adoption dated April 23, 2009, through which Mahesh Dhanji Dedhia adopted Master Jash. In accordance with Section 16, the Deed of Adoption was likewise recorded with the Registrar of Assurances. The subsequent change in the son's name from Master Jash Jayesh Gala to Master Jash Mahesh Dedhia was recorded in the official government gazette. It is worth mentioning that the petitioner's son's name appeared as Master Jash Mahesh Dedhia on his PAN Card, Adhar Card, and School Identity Card. The provision of these documents to the Passport Authorities served as additional evidence that the son had severed his legal ties with his biological father. Given the circumstances, the biological father's name of the petitioner's son ceased to be legally significant.

In a case akin to the current one, the Court ruled in *J. Nijish Archibald v Regional Passport Officer, Regional Passport Office, Madurai*<sup>21</sup>, that severance of ties existed between the child and the biological father due to the biological father having executed a Deed of Adoption in support of the spouse of his ex-wife, in addition to relinquishing his rights regarding the biological mother.

Evident from the circumstances of the case, the adoption complied with Sections 5, 6, 15, and 16 of the Act and was therefore valid. In the case of *Hiraman Manga Jangale v Girjabai*<sup>22</sup>, the Court determined that an adoption that is ipso jure void is null and invalid. However, that does not apply to the current situation. The enforcement of the Hindu Adoptions and Maintenance Act, 1956 was called into question by the passport authorities, who also violated the son's fundamental right to travel<sup>23</sup> as protected by Article 21<sup>24</sup> of the Constitution.

The respondent's argument is rejected in light of the aforementioned directives from the Ministry of External Affairs, New Delhi, which are deemed unconstitutional and invalid. Thus, the respondent was legally obligated to issue the passport despite the non-compliance with the instructions contained in the letter dated 06.05.2014.

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<sup>21</sup> *J. Nijish Archibald v Regional Passport Officer* WP No 15074/2016

<sup>22</sup> *Hiraman Manga Jangale v Girjabai* (1983) Mah LJ 81

<sup>23</sup> *Teesta Chatteraj v Union of India* (2012) SCC OnLine Del 1949

<sup>24</sup> *Maneka Gandhi v Union of India* (1978) 1 SCC 248

Likewise, in *John Ebenezer v The Regional Passport Officer Lnindord*<sup>25</sup>, the child was legally adopted by his stepfather following the divorce of the minor child's biological parents. The petitioner's request to renew his passport and alter the paternity of his child from his biological father to his adoptive father was denied by the passport officer. The Passport Officer was ordered by the court to renew the passport within four weeks.

In *Pawandeep Singh v UOI*,<sup>26</sup> the Court affirmed the Passport Officer's determination that the name of the child's adoptive father should not be included in the passport due to the invalidity of the adoption.

The Deed of Adoption was executed and recorded in *B.S. Deepa v Regional Passport Officer*<sup>27</sup>, just as it was in the present case. The Court ordered the respondents to provide the petitioner's daughter with a passport within four weeks, with the stepfather's name included in the column designated for the father's name.

## JUDGEMENT

The court observed that the adoption of Master Jash by Mr. Mahesh Dhanji Dedhia was lawfully executed and registered, altering the child's legal status. Section 16 of the Act establishes a presumption of validity for registered adoption documents unless proven otherwise. Consequently, the rejection of the passport application was deemed arbitrary and contrary to the law. Therefore, the Court directed the respondents to accept the petitioner's application for her son's passport without insisting on the disclosure of the biological father's name. The application was to be processed within 45 days from the date of the judgment.

## CONCLUSION

The Hindu Adoptions and Maintenance Act of 1956 states that in the context of a lawful adoption under its rules, the adopted child's relationship with his or her biological parents ends. The researcher thus believes that, in light of the Act and Article 14 of the Constitution, the

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<sup>25</sup> *John Ebenezer v The Regional Passport Officer* WP (MD) No 12285/2015

<sup>26</sup> *Pawandeep Singh v Union of India* 1991(1) C.L.J 158

<sup>27</sup> *B.S. Deepa v Regional Passport Officer* (2015) SCC OnLine Mad 108

Ministry of External Affairs should issue clear passport issuance instructions that follow the provisions of this Act, as well as include additional columns where the names of adopted parents and stepparents are to be mentioned if applicable, as emphasized in *John Ebenezer v The Regional Passport Officer Lnindord*.<sup>28</sup>

However, as has been observed in numerous situations, the adopted child is vulnerable to exploitation due to a lack of regular checks on his or her welfare status. Section 15 of the Act, as stated, prohibits the adopted kid the ability to renouncing his status and returning to his native family. The Act thus fails to protect such youngsters. As a result, the researcher believes that if possible, the adopted child should be able to revoke the adoption.

In addition, Section 11 clauses (iii) and (iv) recognize adoption between opposite sexes with a 21-year age gap.<sup>29</sup> According to the researcher, such a distinction is arbitrary and does not ensure that adopted children are not exploited. As a result, harsher provisions must be included in the Act to penalize adoptive parents for exploitation rather than calculating the age disparity.

Furthermore, Sections 7 and 8<sup>30</sup> of the Act deny the right of individuals from the LGBTQ+ community to adopt. This violates Article 14's guarantee of equality and thus the Constitution's basic structure doctrine.<sup>31</sup>

The researcher proposes that Sections 7 and 8's scope should be expanded to include the LGBTQ+ population.

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<sup>28</sup> *Ibid*

<sup>29</sup> *Golakchandra v Krutibai* AIR 1979 Ori 205

<sup>30</sup> Indian Evidence Act 1872, s7

<sup>31</sup> *Kesavananda Bharti v State of Kerala* AIR 1973 SC 1461