

KARNATAKA STATE LAW UNIVERSITY

NAVANAGAR, HUBBALLI



**Report of the Minor Research Project-Non-State Justice System in the State
of Karnataka.**

On the topic:

**JUSTICE THROUGH CHURCH COURTS AND CANON LAW IN UDUPI
AND MANGALURU DIOCESES**

Submitted by:

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Udupi

Submitted to:

**Karnataka State Law University, Hubballi.
27.9.2021.**

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Hubballi-25.

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DECLARATION

We, Dr Rangaswamy D., Principal investigator and Assistant Professor, Karnataka State Law University, Hubballi, and Smt. Jayamol P.S, Co-investigator and Asst. Professor, Vaikunta Baliga College of Law, Udupi do hereby declare that this report on Minor Research Projects of Karnataka State Law University on the topic “**JUSTICE THROUGH CHURCH COURTS AND CANON LAW IN UDUPI AND MANGALURU DIOCESES**” is a *bonafide* work done by us to submit before the Karnataka State Law University, Hubballi. We also declare that this project or any part of it has not been submitted for any degree, diploma or fellowship to this or any other institution. This is the original report of the study conducted by us on the Non-State Justice system in the State of Karnataka.

Place: Hubballi

Date: 27.9.2021

Dr. Rangaswamy D.

Smt. Jayamol P.S.


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ACKNOWLEDGEMENT

This research work on “**Justice through Canon law and Church Courts in Udupi and Mangaluru Dioceses,**” entirely focuses on the Christian community and their internal dispute settlement system through Church Courts based on Canon law. The work has been ably supported by contributions from many quarters. We hereby express our deep-felt gratitude to **Prof. (Dr.) Ishwar Bhat**, Vice-Chancellor, Karnataka State Law University, Hubballi for initiation of study regarding non-State justice system which is a unique and novel idea relating to Justice administration. This study intends to map the non-State entities with the administration of the justice system. **Prof. (Dr.) IshwarBhat** has been a continuous source of inspiration and has supported and guided us throughout the preparation and completion of this project.

We are also thankful to **Prof. (Dr.) C.S Patil**, Director, Law School, Karnataka State Law University for the guidance and timely supervision of this study. From the inception till the completion of the study, we were greatly supported by the Udupi diocesan Bishop **Gerald Issac Lobo**, without whom, the work would not have been a reality. We express our deep-felt gratitude to Mangalore diocesan Bishop Peter Paul Saldanhafor his timely support and blessings.

We have also received ample help from **Fr. Victor Demello**,Judicial Vicar of Mangalore and Udupi diocese, **Fr. Hentry**, Mangaluru diocese, **Fr. Davis Panadan**, Principal,Christ Academy, Bangalore, various tribunal priests of Udupi and Mangalore diocese, Parish priests who responded to our questionnaire and also to the members of the Christian community who have shown enough patience to respond to our questionnaire. We express our sincere gratitude to them. We place on record our profound gratitude to our colleagues and students for their support and encouragement. Above all, we bow before that leading force in nature, without him nothing would have been possible.


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JUSTICE THROUGH CHURCH COURTS AND CANON LAW IN THE UDUPI AND MANGALORE DIOCESES

1. BACKGROUND OF THE STUDY

Public order is an essential component of the modern political system.¹ The preservation of public order is the basic function of any organized society. The very existence of public order symbolizes Justice. Justice can be achieved only through the legal and judicial processes. According to Thomas Aquinas, the law is a specific ordinance of reason meant to promote the common good and promulgated by one who has the responsibility for the community. Law is not an end in itself, but an instrument that serves for the realization of justice in society.² The principles of justice, equity, and good conscience are nothing but emanating from the principles of natural law which already finds a place in the legal systems of the world.³ Justice is a virtue necessarily ordered to charity, and in this way, it is integrated into a higher justice, which is sanctity. If this connection is not kept in mind, then the law can either come to be seen as a mere attachment to norms.

Outside this well ordained legal system of the State, due respect is given for divinity and divined principles across the political system.⁴ In line with these principles, some other mechanisms try to impart justice to their subjects. That may be in the form of religious institutions, caste-based groups of the communities and non-governmental organizations.

¹. See generally. Art.19 (2), Art.19(3), Art.19(4), Art.25 (1), Art.26 of Constitution of India, 1950; Art.19 Art.56 of Afghanistan Constitution, 2014; Art.34 (2) of Algeria Constitution, 2020; Art.10 (3), Art.58 (3), Art.203 of Angola Constitution, 2010; Art.25 (2) of Armenia Constitution, 1995; Art.27 of Bahrain Constitution, 2002; Art.39 & Art. 41 (1) of Bangladesh Constitution, 1972; Art.9 of Belize Constitution, 1981; Art.23 of Benin Constitution, 1990; Art.19 (3) & Art.19 (6) of Chile Constitution, 1980; Art.53 of Constitution of People's Republic of China, 1982; Art.8 of Republic of Congo Constitution, 2015; Art.19 (3), Art.20 (1), Art.25 (2), Art.27 (1), Art.30 (2) of Cyprus Constitution, 1960; Art.18 (2), Art.19(2) of Fiji Constitution, 2013; (all these provisions intent to interlock human rights with public order)

². To understand Law as a social instrument see Luther P. Gerlach, & Virginia H. Hine, People, Power, Change, Movements of Social Transformation, The Bobbs-Merril Company Inc, New York, 1970; P. Ishwara Bhat, Law and Social Transformation, Eastern Book Company, Lucknow, 2009; Oliver Mendelsohn, Law and Social Transformation in India, Oxford University Press, Oxford, 2014

³. For an understanding of natural law see generally, Alan Watson, The Nature of Law, Edinburgh University Press, Edinburgh, 1977; John Chipman Gray, The Nature and Sources of the Law, Columbia University Press, New York, 1909; Huntington Cairns, Legal Philosophy from Plato to Hegel, The John Hopkins Press, Baltimore, 1949;

Frederick Pollock, The first Book on Jurisprudence, Macmillan and Co., Ltd, New York, 1896.

⁴. The Constitutions recognise and acknowledged divine power are; Preamble of Constitution of Afghanistan, 2004; Preamble and Art.2(2), Art.56, Art.61 of Constitution of Islamic Republic of Iran, 1979; preamble of Constitution of Ireland 1937; Constitution of Liberia, 1986; Preamble of Constitution of Palau 1981; Art.4 (1) of Palestine Constitution, 2003; Art.11 of Constitution of Saudi Arabia 1992; Art.56 of Yemen Constitution, 2015

Human law is mutable and always capable of being perfected. Changes in the circumstances may make a just decision taken today as unjust tomorrow. However, human law must seek to interpret the demands of the divine law perfectly. In simple words, it can be said that divine law is the inspiring principle and the limit of human law. There has been a constant appeal to these 'higher laws' than the man-made laws to secure absolute justice. This is possible to attain only by observance of natural law or divine law of God⁵.

"Doctrine of Religious faith' is the predominant feature of the constitutional⁶ as well as Human Rights⁷ jurisprudence. The State has to create the necessary economic and social environment to enable people of all religious faiths to make a reality of their religious principles.⁸ Canon law is a branch of social *mores* closely connected with this doctrine. Some of the Constitutions have specifically recognized the authority of these Canon laws.⁹ Canon law is such a legal system that regulates the conduct of the Christian community. It is a set of rules and policies by which a church governs itself and its community. The church is the mystical body of Christ,¹⁰ the people of God, the assembly of believers in Jesus Christ. She is also the society founded by Christ to continue his work of salvation in the world¹¹. Canon law has two

⁵. Mukund Sarada, Concept of Dharma and Justice: a study in relation to law and administration of justice, *Nyaya Deep*, Volume XVII, Issue 3&4, July 2016&October 2016, p.7

⁶. See generally, Art.10, Art.69 (2) of Angola Constitution, 2010; Art.48 of Constitution of Azerbaijan 1995; Art.19 of Constitution of Colombia 1991; Art.2 of Constitution of the Czech Republic 1993; Art.38 (3) of Constitution of Timor-Leste 2002; Art.24 of Constitution of Paraguay 1992; Art.48 of Sudan Constitution, 2019; Art.4 (11) & Art.20 (2) of Sweden Constitution, 1974; Art.59 of Constitution of Republic of Venezuela, 1999

⁷. Art.18 of International Covenant on Civil and Political Rights, 1966; Art.12 of Migrant Workers; Art.14 of CRC; Art.1 of Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, 1981; Art.1 of Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992; Art.18 of the Cairo Declaration on Human Rights in Islam, 1990; Art.5 of International Convention on the Elimination of All Forms of Racial Discrimination, 1965; Art.12 of American Convention on Human Rights, 1969.

⁸. Art.27 (11) of Constitution of Sri Lanka 1978

⁹. Art.13 (1) of Andorra Constitution, 1993; Art.110 (1) of Constitution of Cyprus 1960; Art.3 (1) of Greece Constitution, 1975; Art.13 of Islamic Republic of Iran, 1979; Art.43 of Constitution of Lithuania 1992;

¹⁰. Fairchild p.40. For the history of Church see generally, Darvas, J.E. *at. el.*, *A General History of The Catholic Church from the Commencement of the Christian Era Until the Present Time*. New York: P. O'Shea, 1868; Jedin, Hubert, and John Patrick Dolan, eds. *History of the Church*. New York: Crossroad, 1980; Andrew Jenson. *Encyclopedic History of The Church of Jesus Christ of Latter-Day Saints*. Utah: Desert New Publishing Company, 1941; Rudolf Schwarz. *The Church Incarnate: The Sacred Function of Christian Architecture*. Chicago: Henry Regnery Company, 1958; Ferdinand Christian Baur. *The Church History of the First Three Centuries*. London: Williams and Norgate, 1878; Frederic H. Chase, Jr. *The Fathers of The Church: A New Translation*. New York: Fathers of the Church Inc, 1958

¹¹. Visser 't Hooft & Willem Adolph. *The Church and Its Function in Society*. London: George Allen and Unwin Ltd, 1937, p.57; See also, Rudolf Schwarz. *The Church Incarnate: The Sacred Function of Christian Architecture*. Chicago: Henry Regnery Company, 1958;

functions to perform in society. Firstly, to govern churches with a uniform code of rules; secondly, to guide church members in their conduct and worship. It is separate from legal codes enacted by governments. But it is a well-established legal system that regulates the conduct of church members, diocese, priests and also prescribes sanctions for the violations of the canons.

The present study focuses on the codes of Canon law, as an established legal system based on the ancient Roman legal system and church courts act as instrumental in implementing this canon law system. In every diocese, there will be church courts to settle the disputes among the community members. The study reveals how the Church courts impart justice, to the community members based on the provisions of Canon law.

1.1. Christian Community in the Research Area

The Christian community in India occupies a prominent position in the different walks of life. The *Indian Christian Marriage Act, 1872*¹² defines the term "Christian" as a person professing the Christian religion. Under the Act the term 'Indian Christian' includes Christian descendants of native Indians converted to Christianity as well as new converts.¹³ Law Commission of India in its 15th Report considered the definitions of the term 'Christian' as any person who has become a member of any Christian church by an act of customary in that Church for the admission of members and continues to be such unless and until the laws of the church determine otherwise. The Commission¹⁴ observed that Christian means and includes a person who has become a member of some Christian Church by an act recognized in that church, and a person who has been baptized. According to 'Institutes of Canon Law' and the Code of Canon Law, by 'Canonical Society of Great Britain and India', baptism makes one a Christian. To say that one is a Christian, it must be established that he professes the Christian faith.¹⁵

¹² . Act No.15 of 1872

¹³ . In *Leelamma v. Dilip Kumar Alias Kochaniyan*, AIR 1993 Ker 57 the Kerala High Court viewed that "The concept of a born Christian, is alien to Law. Under the Canon Law, one is inducted into Christianity by baptism, the first Sacrament. The expression 'Christian' is not defined precisely in any of the Statutes.

¹⁴ . Law Commission of India. "Code of Criminal Procedure Code, 1973." Vol.1. New Delhi: Law Commission of India, 1960

¹⁵ . *Supra* note 14

Christianity is one of the major religions in India.¹⁶ It is believed that by the arrival of St. Thomas, the apostle of Christ, the seeds of Christianity sown in the soil of India in 52AD. At present, there are about 25 million Christians in India. Kerala, Goa and Mizoram states have a high density of Christian population in India. The state of Kerala has the largest number of Christians among the States. Christians including Catholics, Orthodox and Protestants form the third-largest group in India¹⁷. But for centuries it remained in a morbid condition. With the coming of the colonial powers and the missionaries from Europe, faith began to spread slowly to different parts of India. It is due to the relentless activity of the Portuguese; the seeds of Christianity were sown in Canara. In 1521, Lopez de Sampaio entered Canara with his soldiers and under his care, Franciscan missionaries started to spread the Gospel¹⁸. On 1st September 1886, Pope Leo XIII established the Indian Hierarchy, and it was officially proclaimed in a Council of the Bishops of Southern India, held in Bangalore on 25th January 1887.¹⁹

The Udupi District had been a part of the Diocese of Mangalore since 1887. The Civil District of Udupi was separated to form the new Diocese of Udupi comprising of the Taluks of Karkala, Kundapura and Udupi²⁰. The Diocese of Udupi (Latin Rite) was erected on 16.07.2012 by a Papal Decree of His Holiness Pope Benedict XVI.

Religion	Total	Percentage	Male	Female
Hindu	1,009,179	85.72	482,147	527,032
Muslim	96,740	8.22	46,775	49,965
Christian	65,838	5.59	30,345	35,493
Sikh	232	0.02	131	101
Buddhist	161	0.01	93	68
Jain	4,534	0.39	2,307	2,227
Others	155	0.01	69	86
Not Specified	522	0.04	264	258

¹⁶ . For the historical origin and evolution of Christianity in India, see generally, Robert Eric Frykenberg. *Christianity in India - From Beginnings to the Present*. New York: Oxford University Press, 2008; Mingana, Alphonse. *The Early Spread of Christianity in India*. Piscataway, NJ: Gorgias Press, 2010; Sir John William Kaye. *Christianity in India: An Historical Narrative*. London: Smith Elder and Company, 1859; Latourette Kenneth, Scott. *A History of The Expansion of Christianity*. New York: Harper and Brother Services, 1937.

¹⁷ . See Office of the Registrar General & Census Commissioner. "Population Enumeration Data (Final Population)." Population by Religious Community. C-1. New Delhi: Office of the Registrar General & Census Commissioner, India, 2011. available at <https://censusindia.gov.in/2011census/C-01.html> (visited on 12th January 2020)

¹⁸ . *Ibid*

¹⁹ . *Id*

²⁰ . *Id*


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Sources: Karnataka Census 2011²¹

Table 1 shows the density of the population of Christians in the Udupi district. They comprise only 5.59 of the total population and stands as the third largest religion in Udupi.

Fig.1- Religion wise Population in Udupi

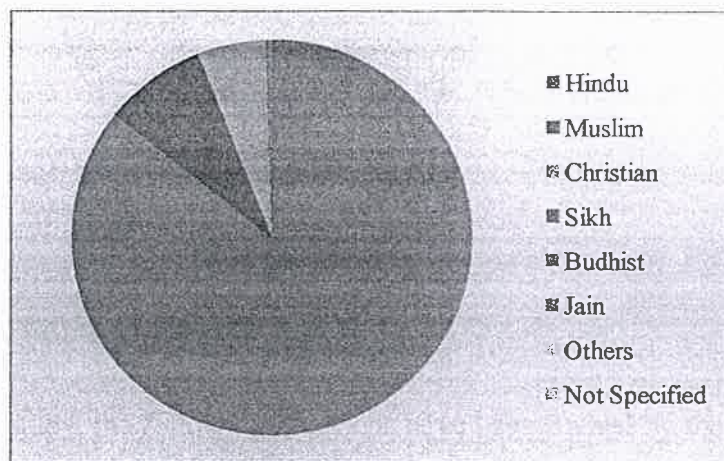


Table 2 – Religion-wise Population -Dakshina Kannada District

Religion	Total	Percentage	Male	Female
Hindu	1,403,854	67.18	696,962	706,892
Muslims	501,896	24.02	250,215	251,681
Christians	171,398	8.2	81,113	90,285
Sikh	525	0.03	331	194
Buddhist	445	0.02	198	247
Jain	10,397	0.5	5,245	5,152
Others	138	0.01	75	63
Not specified	996	0.05	575	421

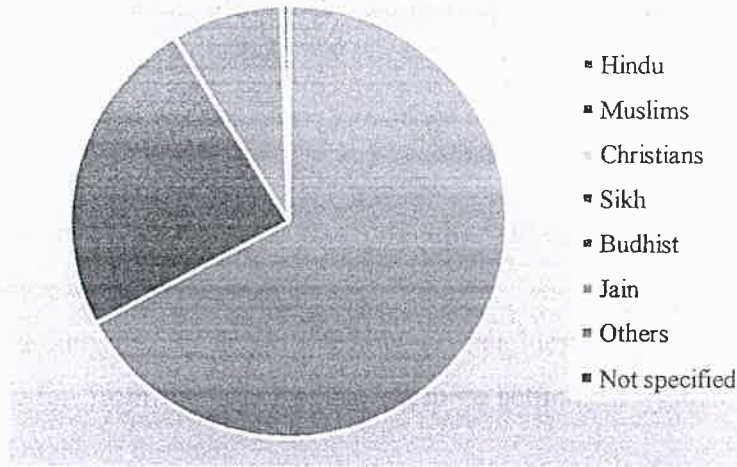
Sources: Karnataka Census 2011²²

Table - 2 shows the religion-wise population in the Dakshina Kannada district. The Christians constitute only 8.2 percentage of the total population and they stand in the third position.

²¹ . Id

²² .Ibid.

Fig.2- Religion wise Population in Dakshina Kannada District



1.2. Research Questions

For the present study, the following questions have been framed by the researcher for a better understanding of the overall performance and contribution of NSJS to the administration of the justice system.

1. What are the historical, cultural and geographical contexts of the application of Canon Law?
2. What are the main principles applied in this way of dispute settlement scheme?
3. What are the types of cases dealt with by the Church Courts?
4. What is the level of satisfaction accorded to the parties to the dispute after settlement?
5. What are the strengths and shortcomings of the Canon Law Courts in dispute settlement schemes?
6. What is the impact of the decisions given by the Church Courts dispute settlement in the formal legal system?

1.3. Objectives of The Study

The objectives with which the present study is undertaken by the researchers are as follows:

1. To examine the influence of religious institutions in strengthening the Non-State Justice System in the State of Karnataka.
2. To examine the various modes of dispute settlement adopted by Church Courts in settling disputes.
3. To examine the status of various stakeholders and their expectations and satisfaction from the church-based dispute settlement systems under the Udupi and Mangalore diocese.
4. To examine the principles adopted, duration of the dispute, costs involved in the dispute settlement.
5. To compare the effectiveness of the system with that of the formal Court procedure of the modern system.
6. To find out the advantages and pitfalls of the Canon Law application in the dispute settlement system.
7. To identify the factors which hinder the growth of the Canon law, its application and acceptance among the Christian community?

1.4. Research Methodology

The study is mainly focused on the Christian community coming under the Mangalore and Udupi dioceses. The principal source of data for the present study is based on both primary as well as secondary data. The project work is fundamentally based on an in-depth analysis of primary sources such as relevant provisions of the Canon Law, case laws testing the validity of Canon Laws. To availing a clear picture of the study, the researchers have conducted a non – doctrinal study of the church courts. Researchers have prepared a questionnaire which is distributed among Christian community members to know about the general nature of their disputes and the usual mode of dispute settlement method adopted by them. Another set of questionnaires has been prepared and distributed among parish priests to know how they are