

**A Brief Report of the Survey Conducted on  
Non State Justice System at Ecclesiastical Court or Church Courts  
in Bengaluru**

**Submitted as part of the fulfilment of the Minor Research Project**

**Karnataka State Law University**



**Principal Researcher**

**Prof Dr Mohan R Bolla**  
*Principal, KristuJayanti College of Law, Bengaluru*

Academics  
1-4-23

*[Handwritten Signature]*

**IQAC COORDINATOR**  
Karnataka State Law University  
Hubballi-25.

*[Handwritten Signature]*  
**Registrar**  
Karnataka State Law University  
Navanagar, Hubballi-580 025.

11/12/23  
2699



# Kristu Jayanti College of Law

**Bengaluru** Affiliated to Karnataka State Law University

Approved by Bar Council of India | An Institution Managed by CMI Fathers

Prof Dr Mohan R Bolla  
Principal  
Principal Researcher  
KSLU NSJS Minor Research Project

## ACKNOWLEDGMENTS

There is many a great soul who deserves appreciation for extending help and cooperation extended in the research work undertaken as part of the minor research project viz., "**Non State Justice System at Ecclesiastical Courts or Church Courts in Bengaluru**", of the esteemed Karnataka State Law University.

My respectful kudos to **Prof Dr Ishwara Bhat**, the Vice Chancellor, Karnataka State Law University for recognizing and suggesting to initiate, for sanctioning and for guiding and encouraging me to complete the Minor Research project.

I am thankful to **Prof Dr Chidananda Reddy Patil**, Dean, School of Law, Karnataka State Law University for the encouragement given in conducting the Minor Research Project.

I am also grateful to **Prof Dr Taranath**, for facilitating and hosting the presentation session held at Mangaluru. **Dr Ranga Swamy** deserves appreciation as a co researcher in the same research project at a different area other than Bengaluru for the cooperation extended.

I am deeply indebted to **Sri Benjamin Franklin**, Advocate and Registrar of Marriages under the Christian Marriage Act. Sir has introduced various functionaries of Diocese Church including the Bishop

  
**IQAC COORDINATOR**

**Karnataka State Law University**

Hubballi-05.

  
**Registrar**

**Karnataka State Law University**  
Navanagar, Hubballi-580 025.

and the Judicial Vicar **Rev Dr Arockia Swamy Sebastian** and other Fathers at various churches in Bengaluru.

I am also grateful to the research assistant **Mr Jaya Deva Charya**, who has exclusively done the collection of data from the various church authorities in Bengaluru city with keen interest and knowledgeable research enthusiasm.

I am also grateful to **Rev Dr Augustine George**, Principal, Kristu Kristu Jayanti College, Autonomous and our Director **Rev Fr Emmanuel P J** for the help and encouragement given in completing the Minor Research Project.

I appreciate the help and cooperation extended by **Mr Viji T**, Faculty Member, Kristu Jayanti College of Law, **Rev. Dr. Davis Panadan**, Principal, Christ Academy College of Law, Bengaluru, **Ms. Chelsea**, student of law, Kristu Jayanti College of Law and **Prof Dr. Jonas Richard**, Head, Department of Sociology and Social Work, Kristu Jayanti College, Autonomous.

The research work included empirical survey conducted involving various church authorities and Fathers/Brothers in Bengaluru City. I am thankful to each one of them for responding to the schedule/Questionnaire and for giving their opinions.

Last but not the least my thanks are due to all the ten Minor research Project co researchers and the non teaching faculty at the Karnataka State Law University, Hubballi.

  
[Prof Dr Mohan R Bolla]

  
**IQAC COORDINATOR**  
Karnataka State Law University  
Hubballi-25.

  
**Registrar**  
Karnataka State Law University  
Navanagar, Hubballi-580 025.

**A Brief Report of the Survey Conducted on  
Non State Justice System at Ecclesiastical Court or Church Courts in  
Bengaluru**

-Prof. Dr. Mohan R. Bolla<sup>1</sup>

Non-state justice system (NSJS) refers informal justice delivery mechanism by the institutions other than the formal Civil Court. Where there is no access to formal justice or due to some customary or traditional or communal practices dispute settlement takes place through the NSJS. Thus, NSJS may include a range of traditional, customary, religious and informal mechanisms.<sup>2</sup>

From the middle of the 12th century ecclesiastical Courts<sup>3</sup> were recognised as having exclusive jurisdiction in matters of marriage and divorce. The Church of Rome was the supreme ecclesiastical authority in England. The ecclesiastical Courts applied Canon Law in matrimonial causes. Christian marriage was indissoluble, but divorce *a mensa et thoro* (in the nature of the present day judicial separation) was granted for certain cases. After 1857 divorce by judicial process in England came into operation for the first time by virtue of the Matrimonial Causes Act, 1857.<sup>4</sup>

A 2010 United Nations-commissioned study by the Danish Institute for Human Rights noted five distinct Non State Justice System types, including 1) Traditional leaders 2) Religious

<sup>1</sup> Principal, Kristu Jayanti College of Law, Bengaluru. The Survey could be conducted with the help of Mr. Franklin, Registrar of Christian Marriages, Lingarajapuram, Bengaluru. The survey could be organized with the active support of Mr. Charya, Research Assistant.

<sup>2</sup> 'Non-state Justice and Security Systems,' DFID, May 2004, available at <http://www.gsdr.org/docs/open/ssaj101.pdf>

<sup>3</sup> *Molly Joseph alias Nish v. George Sebastian alias Joy* (1996) 6 SCC 337- the Ecclesiastical Tribunal (Church Court as it is referred to at times)

<sup>4</sup> Vide Halsbury's Laws of England -Vol. 13 -- 4th Edition at page 244 as quoted by K T Thomas, J., in *George Sebastian Alias Joy vs Molly Joseph Alias Nish* AIR 1995 Ker 16

leaders 3) Local administrators with an adjudicative or mediation function 4) Customary or community courts where the adjudicator is not a lawyer 5) Community mediators.<sup>5</sup>

The system may co-exist with state administered system of justice. It includes some traditional systems in the rural areas. In a village or community, people may generally approach to the village/community head to settle any dispute. The village/community head may hear to the disputing parties in an open village/community meeting place and gives a verdict. 'Khap panchayat'<sup>6</sup> known as [katta panchayats in Tamil Nadu]<sup>7</sup> may be taken as an extreme and notorious example.<sup>8</sup>

In this minor research project, a study has been conducted on "Non State Justice System at Ecclesiastical Court or Church Courts in Bengaluru"

### Theme and Research issues

The researcher studied the working of these **non-formal judicial bodies** associated with churches in Bengaluru. Church is a Christian<sup>9</sup> house of worship; a building where religious

<sup>5</sup> A 2010 United Nations-commissioned study by the Danish Institute for Human Rights

<sup>6</sup> *Shakti Vahini v Union of India*, (2018) 7 SCC 192- The Caste councils or Panchayats popularly known as 'Khap Panchayats' try to adopt the chosen course of 'moral vigilantism.

<sup>7</sup> See *Arumugam Servai vs. State of Tamil Nadu*, (2011) 6 SCC 405

<sup>8</sup> In *Shakthi Vahini vs. Union of India* (2018) 7 SCC 192 it was described ".....the parallel law enforcement agency consists of leading men of a group having the same lineage or caste which quite often meets to deal with the problems that affect the group. They call themselves Panchayats which have the power to punish for the crimes and direct for social boycott or killing by a mob. Sometimes these Panchayats have the nomenclature of Khap Panchayats which have cultivated and nurtured the feeling amongst themselves that their duty is sanctified and their action of punishing the hapless victims is inviolable. The meetings of the collective and the discussions in the congregation reflect the level of passion at the highest...." See also *In Re: Indian Woman says gang-raped on orders of Village Court* AIR 2014 SC 2816

<sup>9</sup> The Lexico-graphical meaning of the term 'Christian' is : "one who believes, professes to believe, or who is assumed to believe in the religion of Christ and whose behaviour exemplified his teachings."- 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. It is one of the seven Sacraments, along with Confirmation, Eucharist, Marriage, Penance, Anointing of the sick and Holy Orders. But, what is conclusive in eparchial law, is not conclusive in temporal or civil law. To say that one is a Christian, it must be established that he professes the Christian faith. - Chettur Sankaran Nair, J. in *Leelamma vs Dilip Kumar Alias Kochaniyan* AIR 1993 Ker 57



services take place. But, it is a place where dispute settlement also takes place with mediation arbitration and negotiation.

Historically, Christian culture has a strong, rich tradition of faith-based dispute resolution. Since the middle ages, Christian clergymen have been called upon to act as mediators in disputes ranging from minor family squabbles to international diplomatic clashes between nations on the brink of war. Within the spectrum of faith-based ADR, Christian forms of dispute resolution are the least formal, and generally range somewhere between negotiation and mediation. The informality of Christian dispute resolution technique is no accident. Naturally, Christians draw their traditions of faith-based Non State dispute resolution from the Bible. The system may be referred to the teachings of Jesus Christ. Basically, Jesus is believed to have taught that all people had to work out their differences in order to receive salvation.

The Holy Bible says, "Love your enemies, do good to those who hate you, bless those who curse you, pray for those who ill treat you: If someone strikes you on one cheek, turn to him also the other."<sup>10</sup> Likewise, "Whatever you bind on earth shall be bound in heaven; and whatever you loose on earth shall be loosed in heaven."<sup>11</sup> This is a common theme not only in the teachings of Jesus himself, but also throughout the New Testament. For example, in his letter to the Romans, the Apostle Paul wrote, "Do not repay anyone evil for evil ...If it is possible, as far as it depends on you, live at peace with everyone."<sup>12</sup> Arguably, there is no stronger command for Christians to resolve their disputes peacefully than in the Sermon on the Mount, when Jesus is said to have told his followers, "Blessed are the peacemakers, for they shall be called the children of God." Jesus was said to have compelled his followers to

<sup>10</sup> See Christine Hatt, 'Martin Luther King,' page 46 quoting from the Gospel of Luke, Chapter 6, verses 27-29

<sup>11</sup> Gospel of Matthew 16:19, Jesus to Peter.

<sup>12</sup> Romans 12:17-18

  
**IQAC COORDINATOR**  
Karnataka State Law University  
Hubballi-25.

  
**Registrar**

Karnataka State Law University  
Navanagar, Hubballi-580 025.

forgive one another and reconcile their differences. Jesus also showed his followers as to how to go about accomplishing those goals.

### **General Faith Based Dispute Settlement Practices**

The dispute settlement takes place with the involvement of a priest as a third party through negotiation, mediation and arbitration. The role of the priest generally is to facilitate communication between the two parties. The communication itself may help them reach an acceptable resolution to their dispute. Then, the priest may listen to the parties, separately and together. The priest may sometimes collect documents. The priest may interview or inquire the witnesses in an effort to identify the strengths and weaknesses of each party's argument so that they can rationally reach an agreement. The priest through the mediation helps the parties understand the underlying problems and concerns of each other. The priest makes them aware of the options that will help them to resolve the dispute.

The dispute redressal system is said to have been prevailing since ages. The parties to the conflict are generally the members of the same community. The system is closely tied up with faith. The parties have a general practice to approach the church/priest for every dispute settlement. The parties do not generally lie before the priest. The parties generally agree to the decision of the priest and follow it with respect and faith.

This research project explored the religious approach viewed through the lens of alternate dispute resolution (ADR) as it is commonly practiced in Bengaluru.

### **The Objective of the Research Study**

  
**IQAC COORDINATOR**  
Karnataka State Law University  
Hubballi-25.

  
**Registrar** 4  
Karnataka State Law University  
Navanagar, Hubballi-580 025.

The objective of the Research Project is \_


- To study the structure and organization of the NSJS by the Churches.
- The socio legal and economic status of the families and the persons involved in the NSJS
- The Socio educational background of the persons involved in the NSJS

Some Salient concepts relevant to the Administration of Church Courts.

### **The Canon Law of Marriage**

The well known work of Bouscaron on Canon Law, Part V relates to marriage. According to Canon 1012 it is impossible for a valid contract of marriage between baptized persons to exist " without being by that very fact a sacrament". The Canon Law described marriage as a sacred contract. Canon 1020 provides that a pastor has the right to assist at the marriage. He shall carefully investigate whether there is any obstacle to the celebration of the marriage. Inter alia, he must ask both the man and the woman broadly whether they are under any impediment. Canon 1035 lays down that all persons who are not prohibited by law can contract marriage. The expression impediment, may be defined as a circumstance which renders a marriage either illicit or invalid. The impediments have also been classified. Number 7 among them is dispensable or non-dispensable, according as it can or cannot be removed by dispensation. In Canon 1040 which relates to dispensations it is stated at page 499 that a dispensation is a relaxation of law in a particular case. Canon 1076 provides that in the direct line of consanguinity, marriage is invalid between all the ancestors and

  
**IQAC COORDINATOR**  
Karnataka State Law University  
Hubballi-25.


  
**Registrar**  
Karnataka State Law University  
Navanagar, Hubballi-580 025.



descendants. In the collateral line, it is invalid up to the third degree. It is common ground that the consanguinity between the parties to the marriage in the present case is of the second degree. Therefore it was an impediment in the way of the marriage under the Canon law.

It is, however, not disputed that dispensation can be granted in case of consanguinity in the second degree (vide Canon 1052) by the appropriate authorities of the Church. The only case where dispensation cannot be granted is where the impediment is of the first degree which is an absolute bar. Canons 80 to 86 deal with dispensations. The general principle underlying dispensation is "He who makes the law can dispense from the law; as can also his successor or superior and any person to whom any of these may give the faculty". In Manual of Canon Law by Fernando Della Rocca of the University of Rome, it is stated that the obligation of observing the law ceases by reason of exemption properly so called obtained by privilege or dispensation.

The question is whether after dispensation has been granted by the competent authority of the Roman Catholic Church the parties who are within the prohibited degree of consanguinity can still be regarded as within those degrees. The prohibition in the matter of marriage between the parties on the ground of consanguinity is itself created by the Canon Law so far as the Roman Catholics are concerned. If the parties are related by consanguinity in the second degree that per se is an impediment to marriage but under the Canon Law itself it is dispensable and can be removed by dispensation. After dispensation it cannot be said that under the Canon Law any impediment or prohibition exists. The parties will, therefore, not be within the prohibited degree of consanguinity. Ground No. 2 in s. 19 of the Indian Divorce Act will, in these circumstances, not be applicable. The argument on behalf of the appellant that does not contemplate or envisage the removal of the prohibition by a particular authority

  
**IQAC COORDINATOR**  
Karnataka State Law University  
Hubballi-25.

  
**Registrar**  
Karnataka State Law University  
Navanagar, Hubballi-580 025.

doing a particular act, namely, dispensation cannot be accepted. Since the prohibited degrees are not indicated in the Indian Divorce Act and it is the Canon Law to which one has to turn in cases where the parties are Roman Catholics, it is to the provisions of that law that resort must be had for discovering whether the parties at the time of solemnization of the marriage were within the prohibited degree of consanguinity. In our judgment once dispensation is granted by the appropriate authorities the parties cannot be regarded under the Canon law as being within the prohibited degrees with the result that ground No. 2 in s. 19 cannot be availed of.

In *V. H. Lopez v. E. J. Lopez*,<sup>13</sup> it was held that the prohibited degrees in the Indian Divorce Act did not mean the prohibited degrees by the Law of England. For finding out prohibited degrees it was the customary law of the class to which the parties belonged. In Lopez case the law of the Roman Catholic Church was applied. The parties belonged to Roman Catholics. It was also held that where a man and a woman intended to become husband and wife and a ceremony of marriage was performed between them by the Clergyman. The clergymen must be competent to perform a valid marriage. However, there was the presumption in favour of validity to such a marriage. It was one of very exceptional strength and unless rebutted by evidence. The evidence shall be strong, distinct, satisfactory and conclusive to prevail.

In *H. A. Lucas v. Theodore Lucas*<sup>14</sup> it was reiterated that the Roman Catholic Church a marriage between the parties who are within the prohibited degrees of consanguinity is not null and void. Consequently, no decree for nullify could be granted under s. 19 of the Indian Divorce Act in such cases.

---

<sup>13</sup> I.L.R. 12 Cal. 706

<sup>14</sup> Ibid.

  
**IQAC COORDINATOR**  
Karnataka State Law University  
Hubballi-580 025

  
**Registrar** 7  
Karnataka State Law University  
Navanagar, Hubballi-580 025.

## Judicial Power in The Church

In instituting the Church as a perfect society, distinct from the civil power and entirely independent of it, Christ gave her legislative, judicial, and executive power to be exercised over her members without any interference on the part of civil society. It does not fall within our scope to prove that the Church is a perfect society, consequently endowed with the above-mentioned power. If one admits the Divine institution of the Church, and the authenticity and authority of the Gospels, he must acknowledge that Christ so constituted His Church as to enable her rulers to make laws and regulations for the faithful conducive to the attainment of eternal happiness. Moreover, as John XXII (1316-34) wisely remarks: "It would be folly to make laws unless there were some one to enforce them" (Cap. un. de Judiciis, II, 1, in Extravag. Comm.). It is evident, therefore, that Christ in conferring legislative power upon the Church also gave judicial and coercive power. In proof of this we have, besides theological arguments, the practice of the Church which explicitly claimed such power, as well in the beginning (2 Corinthians 10:8; 13:2 sqq., etc.) as during the subsequent centuries of her existence; and, moreover, made frequent use of it. Suffice it to recall the institution of canonical penances, the constitutions and laws of so many pontiffs and councils, containing not only positive enactments, but also sanctions to be incurred ipso facto by the rebellious and obstinate, or to be inflicted upon them at the discretion of ecclesiastical superiors.



**Registrar**  
**Karnataka State Law University**  
Navanagar, Hubballi-580 025.

Now the infliction of punishment certainly presupposes evidence of the crime, since, according to the natural law, no one should be condemned until his guilt has been established.<sup>15</sup> Hence the Church, in making use of her powers of legislation and coercion, must have also exercised judicial power.<sup>16</sup> It is, moreover, historically evident that the Church often exercised these powers either through the Roman pontiff alone, by the agency of his delegates, or through councils, individual bishops, or other judges, ordinary or delegated. St. Paul plainly refers to a perfect judicial procedure when he cautions his disciple Timothy (1 Timothy 5:19) not to receive an accusation against a priest except in the presence of two or three witnesses. In the next century, Marcion, after being expelled from the clergy, vainly appealed to the Apostolic See for restoration to his office. In the trial, degradation, and excommunication of Paul of Samosata by the Council of Antioch (c. 268) we meet with a formal ecclesiastical trial.

The Council of Elvira, threatens with excommunication every accuser of a bishop, a priest, or a deacon who fails to prove his charge.<sup>17</sup> The Third Council of Carthage discusses regulations regarding appeals, and the Fourth Council of Carthage prescribes the manner in which bishops are to exercise judicial authority.<sup>18</sup>

Finally, in the Apostolic Constitutions, which certainly are representative of the ancient practice of the Church, we find that certain days are set for conducting trials; the mode of procedure and other details are also clearly set forth. For later periods evidence abounds.

<sup>15</sup> 'Of Crimes and Punishments-Cesare Beccaria,' available at <https://www.laits.utexas.edu/poltheory/beccaria/delitti/delitti.c16.html#:~:text=No%20man%20can%20be%20judged,on%20which%20it%20was%20granted.>

<sup>16</sup> See Ecclesiastical Courts, available at <https://www.newadvent.org/cathen/04447a.htm>

<sup>17</sup> Refer to 'Council of Elvira-Christian Church council,' available at <https://www.britannica.com/event/Council-of-Elvira>

<sup>18</sup> See 'CHURCH FATHERS: Council of Carthage (A.D. 419)' available at <https://www.newadvent.org/fathers/3816.htm>

  
**Registrar**

**Karnataka State Law University  
Navanagar, Hubballi-580 025.**

  
**IQAC COORDINATOR  
Karnataka State Law University  
Hubballi-25.**