

# ADOPTION LAW IN INDIA

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## ABSTRACT

Every child deserves to have a good Family and has right to grow up in a protected family environment surrounded by loving parents and siblings. However, this is not possible in every Family there are numerous causes and incidents the cause for this maybe the death of their biological parents or many more reasons as in that case adoption is a wonderful option for single parents, childless adults, and homeless children alike. It allows individuals who are not physically related to form a parent-child bond. Adoption is the act of taking and rearing of the child of other's parents as one's own child. Not all cultures have the concept of adoption. One of the biggest examples is Muslim law where adoption is not recognised. The Hindu Adoption and Maintenance Act 1956 is the only personal law in India that deals with adoption. Some personal laws, such as Muslim, Parsi, and Christian, do not allow for adoption.

Adoption” means the process through which the adopted child is permanently becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.” Through this paper the only aim of the researcher is to collect as much data and information attached to the concept of adoption in India including adoption in Hindu Law, Muslim Law and other religions prevalent in India. This paper promises to offer a comprehensive and exhaustive report on adoption law in India. Through this paper the researcher would like to draw the attention towards the drawbacks and the discrepancies that are present in this law. While doing so we will be dealing with the various statutes like Hindu Adoption and Maintenance Act, 1956, the personal Laws Amendment Act, 2010 & The Guardian and wards Act, 1890. Adoption is a sophisticated and vulnerable concept which was susceptible to the societal stigma that was attached to it therein.

## INTRODUCTION

In India, adoption has been carrying out for thousands of years. As per Hindu Shastra, it is believed that the adopted son is a reflection of the natural son of Adoptive Parents. Once a child for good is separated from his biological parents and becomes a legitimate child of his adoptive parents, he has all the rights that are related to adoptive parents. But there is a cause that the adoptive child cannot marry the other adoptive child or real child of his adoptive parents.

Hindu law is the only law which addresses an adopted child as being compeer to a natural child because of the belief that a son was indispensable for spiritual as well as material welfare of the family.

Earlier, Hindu law allowed only male to be adopted and restrictions were imposed on Caste and Gotra. Under Hindu law, female child could not be adopted. Moreover, only the male had a right to adopt, and the dissent of his wife was immaterial.

With the passage of time, such restrictions have changed. Gender biases have reduced to a great extent in today's modern society. At present, under modern Hindu law, every Hindu male or female has the capacity to make an adoption provided he or she has attained majority and are of sound mind. Mostly, all of these laws, rules and regulations have been itemized in the Hindu Adoptions and Maintenance Act of 1956.

The Hindu Adoption and Maintenance Act, 1956 is a part of codifying and modernizing Hindu law and was passed after independence. This act removes several gender based discriminatory factors by reflecting the principles of equality and social justice.

In *Ramasubbayya v. Chanchu Ramayya* adoption was defined as “A juridical act creating between two-person certain relations, purely civil, of paternity and affiliation”. According to the Hindu Adoption and Maintenance Act, 1956 the Hindu married couples or unmarried adults can only adopt a Hindu child. According to the Hindu Adoption and Maintenance Act, 1956 the Hindu married couples or unmarried adults can only adopt a Hindu child.

## ESSENTIAL'S OF A VALID ADOPTION UNDER HINDU ADOPTION AND MAINTAINANCE ACT,1956

According to the provisions of the Act, no adoption is a valid one except:

- The person who is willing to adopt should be capable of taking adoption of a child.
- The person who is giving the child for adoption is capable of giving an adoption.
- The adopted child should be legally capable of getting adopted.
- This act applies to any person who is domiciled in the territories.
- A person who is a Hindu by religion.
- A person belongs to a Buddhist, Jain, or Sikhs can't adopt a child.

The adoption should be completed by performing an actual giving and taking ceremony named, 'Data Homan' (oblation to the fire). It is noteworthy that these points may not be essential in all cases when it comes to the validity of an adoption.

## WHO CAN ADOPT?

To adopt a child in India, a Hindu male have to be sound mind, major and should have the capacity to give a proper life (Financially) to adopt a son or a daughter. Along with this if he has a living wife, the adoption should take place only after her consent, unless the wife has completely and openly renounced the world, she has quit Hinduism, or has been declared unsound mind by the concerned court.

In order to adopt a child in India, a Hindu female have to be sound mind, major and should have the capacity to give a proper life (Financially) to adopt a son or a daughter. Another vital requirement for a Hindu Female to adopt is being single (not married). In case she is married, her marriage has been either dissolve, or the husband is dead or has completely and openly renounced the world, he has quit Hinduism or has been declared unsound mind by the concerned court.

## PROCEDURE FOR A VALID ADOPTION

Under the Hindu Adoption and Maintenance Act, the party that is willing to adopt will apply to the Child Welfare Agency in 1956. Registration can be done either by an Adoption Coordinating Agency (ACA) located in the capital city of each state, or by a Central Adoption Resource Authority (CARA) accredited agency in New Delhi.

After that, the agency performs a preliminary interview with the adopting couple to understand their purpose behind adoption and motivation.

Once the party decides the child they are going to adopt, they send the petition to the court of appropriate jurisdiction, where there is a court hearing on adoption (the court is required to hand down the adoption case within 2 months). Once the decision is issued by the Court, approval is finalized.

## HINDU ADOPTION AND MAINTAINCE ACT,1956

The Hindu Adoption and Maintenance Act, 1956 is a part of codifying and modernizing Hindu law and was passed after independence. This act removes several gender based discriminatory factors by reflecting the principles of equality and social justice. Section 6 to Section 11 of Hindu Adoption and Maintenance Act states clearly the essential conditions for the valid adoption.

Section 6 of the Act i.e. Requisites of a valid adoption states that no adoption shall be valid unless: -

The person adopting has the capacity and also the right to take in adoption.

- The person giving in adoption has the capacity to do so.
- The person adopted is capable of being taken in adoption.
- The adoption is made with the other conditions of the act.

Section 7 and Section 8 of the act states the capacity of a male and female Hindu to take in adoption. General condition of mind relates to unsoundness of mind. All condition of insanity including epilepsy, idiocy and lunacy will come under the unsoundness of mind. A Hindu male or female married under the Special Marriage Act has also the capacity to adopt. A major Hindu male of sound mind can adopt whether he is a bachelor, widower, divorcee or a married person. For a married Hindu male, it is obligatory to obtain the consent of the wife. In case he has more than one wife, consent of all wives is necessary. An adoption made without the consent of wife is void. If the consent of the wife living with the husband is taken but consent of wife living separately is not taken, the adoption is equally void.

Similarly, in case of adoption by wife the act makes a fundamental departure from the old law by empowering a Hindu female though not a married woman to adopt to herself in her own right.

Under the act, a Hindu unmarried woman, widow or divorcee has the capacity to adopt. It has been held in *Vijaya Laxman Vs V.B.T Shankar* that where a widow adopts a child, she need not take the consent of the co-widow because she adopts the child in her own capacity. A married woman has no capacity to adopt. She cannot adopt eve with the consent of her husband. So, the position is that a married woman totally lacks capacity to adopt except in following cases: -

- If her husband has ceased to be a Hindu.
- If he has finally and completely renounced the world.
- If he has been declared by a court of competent jurisdiction to be of unsound mind.

Section 9 of the act specifically mentions the person capable of giving in adoption. It states that no person except the father or mother or the guardian of the child shall have the capacity to give the child in adoption. The father or mother in case of adoption shall have equal right to give the son or daughter in adoption. It also provides that such rights shall not be exercised by either of them saved the consent of the other unless one of them has ceased to be a Hindu or has been declared by the court of competent jurisdiction to be of unsound mind.

Both the father and mother are dead or has renounced the world or has abandoned the child or has been declared by the court of competent jurisdiction to be of unsound mind. In that case, the guardian of the child may give the child for adoption by the permission of the court.

While giving in adoption, the appropriate property must ensure that the adoption of the child is absolutely for the welfare of the child and due consideration for this purpose is to the wish of the child having regard to the age and undertaking of the child, etc.

Section 10 states that the person who may be adopted. These conditions for the child being given in adoption: -

- The child must be a Hindu.
- The child has not already been adopted.
- He or She is not married unless there is a custom, a usage applicable to the parties which permits person who are married or been taken in adoption.
- Child has not completed the age of 15 years unless there is a custom, a usage applicable to the parties which permits persons who have completed the age of 15 years to be taken in adoption.
- Child has not completed the age of 15 years unless there is a custom, a usage applicable to the parties which permits persons who have completed the age of 15 years to be taken in adoption.

Section 11 states some other conditions for a valid adoption. In every adoption, the following conditions must be complied with: -

- If the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son by any relation (whether by legitimate blood relationship or by adoption) living at the time of adoption.
- If the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter by any relation living at the time of adoption.
- If a female is to be adopted by a male, the age difference between the adoptive father and the daughter must be twenty-one years.
- If a male is to be adopted by a female, the age difference between the adoptive mother and the son must be twenty-one years.
- The same child cannot be adopted simultaneously by two or more persons.
- The adoption must be 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 to the family of its adoption.

Section 12 states the effects of adoption and under Hindu law (both old and new) the adoption of a child means that the child is totally uprooted from the natural born family and transplanted to new family. The only tie that he retains with the natural family is that he cannot marry any person in his natural family whom he could not have married before adoption.

Section 12 of the act provides that any property which vested in the adoptive child before the adoption shall continue to vest in such a person subject to the obligation if any attaching to the ownership of such property including such provisions to maintain the relation in the family of his/her birth. For instance, two brother X and Y inherited property from their mother. Subsequently was given in adoption by his father. X will continue to be the owner of the property inherited by him before adoption.

Adopted son can divest a person in hope property is vested prior to adoption. The adopted child is deemed to be the child of the adopter for all purposes. His position for all interest purposes is that of natural born son. He has same rights, privileges and obligation in the adoptive family. Both the adoptive and natural child will inherit equally.

Section 12(c) specifically lays down that the adopted child shall not divest any person of any estate which vesting in him/her before the adoption.

Section 13 states the right of adoptive parents to dispose of their properties which says that an adoption does not the adoptive father or mother of the power to dispose of his or her property by any means.

Section 14 states the Determination of adoptive mother in certain cases as such: -

Section 14(1) determines that a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.

Section 14(2) states that if the adoption is made with the consent of more than one wife, the senior most among them shall be deemed to be the adoptive mother and the others to be stepmothers.

Section 14(3) states that if a widower or a bachelor adopts a child, then the wife he subsequently marries shall be deemed to be the stepmother of the adopted child.

Section 14(4) states that if a widow or an unmarried woman adopts a child, then the husband she subsequently marries shall be deemed to be the stepfather of the adopted child.

Section 15 states that valid adoption not to be cancelled and thus no adoption which has been validly made can be cancelled by the adoptive parents or any other person and also the child cannot renounce his or her status and return to the family of his or her birth.

Section 16 states Presumption as to registered documents relating to adoption which thereby explains that any document registered under any law for the time being in force is produced before any court to record an adoption made and is signed by the person giving and the person taking the child in adoption and in this case the court shall presume that the adoption has been made in compliance with provisions of this act and until it is disproved.

Section 17 prohibits any kind of payment or other reward in consideration of the adoption of any person, and no person shall give or agree to give to any other person any payment or reward.

## ELIGIBILITY OF A MALE HINDU TO TAKE ADOPTION

Under the HAMA (Hindu Adoption and Maintenance Act) any Hindu male who is of sound mind and not a minor can adopt a daughter or son :-

- The Hindu male should not be a minor.
- If he has a wife living, he cannot adopt a child without the consent of the wife.
- Unless the wife has completely renounced the world or has ceased to be a Hindu.
- Or has been declared by the court of competent jurisdiction to be of unsound mind.

## ELIGIBILITY OF A FEMALE HINDU TO TAKE ADOPTION

NOTE: before 2010, the Hindu Female is not eligible to take an adoption. She only gave consent to her husband for an adoption. But after 2010 she has the same right as Hindu Male in adoption.

It is defined under the Section-8 of HAMA, Female Hindu who wants to take an adoption whose: -

The criteria for female Hindu to adopt a son or daughter are: -

- The female Hindu should be of sound mind.
- The female Hindu should not be a minor.
- The female Hindu who is not married can adopt a child.
- In case of a married Female, whose marriage has been dissolved.
- Whose husband is dead or completely renounced the world.
- Or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

## ELIGIBILITY FORGIVEN AN ADOPTION

It is defined under Section-9 of HAMA,( Hindu Adoptions and Maintenance Act) only for Natural Parents, the natural parents have the equal right to give a son or a daughter in adoption and Guardian are eligible for giving adoption but step-parents and the adoptive parents has no right to give adoption because if the eligible parents have the right to give adoption so they are not using their right in a good way and they use it in immoral activities like sale the child, or doing domestic violence etc.

There are two types of Guardians-

- \* Testamentary Guardian: these guardians are appointed thorough parents by will.
- \* Certified Guardian: these are that guardians which are appointed by the court when,
- \* Both the parents are dead.
- \* The parents abandoned the child.
- \* The parentage of the child is unknown.
- \* Both the parents have renounced the world.

SECTION17 talk about that payment or reward in adoption is punishable and also six months imprisonment or fine or both.

## WHAT ARE THE EFFECTS OF ADOPTION

Section 12 of the Hindu Adoption and Maintenance Act, 1956 states about the effects of Adoption and Maintenance Act, 1956 states that about the effects pf adoption. An adopted child will have all the rights as that of a natural child. If the adopted child has any property with him, it will be continued to remain with him after the adoption also. If certain restrictions is upon the child in marrying someone such as degrees of prohibited relationship according to the Hindu Marriage Act, 1956 that will be continued after adoption also.

Once an adoption is conducted it will be final, and the adopting parents cannot cancel it at any circumstances. Also, the child cannot renounce and cannot go back to the old family.

## CONCLUSION

Adoption of any orphan child was getting a chance for a new home and a new beginning of his/her life with new parents'. Every child has right to have parents and a beautiful life. This gives us a chance to show off the human side of humanity. But unfortunately, many parents as well as children can't have it by biologically. So, adoption is one of best Option for both of them. Many children don't have anyone to look after them they will get a new home and a new bright future. Children are the youth of our country and their good upbringing and good environment help the country as well. Every child has a right for good education and a physical and mentally fit body and mind. Adoption is all about coming together to reach a common goal of just living.