

# Who can adopt a Child Under Hindu Adoption And maintenance Act, 1956

By **Anjali Patel** - May 30, 2021



## Meaning of Adoption

**Adoption** is a process whereby a person assumes the parenting of another, usually a child, from that person's biological or legal parent or parents. In the Act adoption is not described but in a Hindu law it is derived from uncodified Hindu laws of Dharamsastra, specifically Manusmriti. Adoption has been described in **Manusmriti** as '**taking someone else's son and raising him as one's own**'. The law of adoption enables a childless person to make somebody else's child as his own.

## Motive of adoption is Sacramental or Secular?

The Shastric Hindu Law looked at adoption more as a sacramental than a secular act. Under the old Hindu law there were many rules relating to adoption which could be supported only on the basis that adoption was a Sacramental act. For instance, there were Rules which could be supported only on the following basis:

- The adopted son must be reflection of a son (saunaka), This prevented the adoption of orphans and illegitimate children.
- Daughter could not be adopted.
- No one could have more than one adopted son.



In Modern Law the purpose of adoption is to rescue the helpless, the unwanted, the destitute or the orphan child to provide them with parents and a home.

**AIR 1974 Case Shripand v. Dattaram**, Supreme Court held that whatever may be motive of adoption the Court need not enquire into them. In the present submission, the Hindu Adoption and Maintenance Act, 1956, has steered off clearly from all the religious and sacramental aspects of adoption and has made adoption a secular institution and secular act. That means the conduct of religious ceremonies are not necessary for adoption. After 1956 All adoption are secular and need to be valid.

### Essentials of Valid Adoption under Hindu Adoption and Maintenance Act

The objects of adoption are two-fold. The first object is religious, namely, to secure spiritual benefit to the adopter and his ancestors, by having a son to offer funeral cakes and libations of water. The second object of adoption is secular, namely, to secure an heir and perpetuate the name of the adoptor.

### Essentials of Valid Adoption under Hindu Adoption and Maintenance Act

Requisites of a Valid Adoption in Given Under Sec.5 to 11.

In Sec.6 there are four important requisites of a Valid Adoption~

- (a) The person adopting should have the capacity, and also the right, to take in adoption.
- (b) The person giving in adoption should also have the capacity to do so.
- (c) The person who is adopted should be capable of being taken in adoption.
- (d) The adoption should be made in compliance with the other conditions mentioned in the Act.

Sec.10 provides that no person shall be capable of being taken in adoption, unless the following four conditions are satisfied,

- (i) He or she is a Hindu;
- (ii) He or she has not already been adopted;
- (iii) He or she is not married unless there is a custom or usage applicable to the parties, which permits married persons being taken in adoption; and
- (iv) He or she has not completed the age of fifteen years unless there is a custom or usage applicable to the parties, which permits persons over fifteen years being taken in adoption.

### Adoption once made is final and irrevocably

In case **Nand vs. Bhupinder AIR 1966**, it was held that an adoption validly made can't be cancelled by the adopter, Natural parents or any other person.

**Sec.15** state that nor can an adopted child renounce his adoptive parents and return to the family of his or her birth. It is very clear that if someone makes an adoption there is no circumstances in which he or she can get rid of child.

**Sec.11** state that an adopted child cannot again be given in adoption.

### Who can adopt child?

Any male or female of Hindu religion can adopt the child, but they should be of major age and of sound mind. A Hindu male or female, married under the special marriage Act, 1954, or whose





but must be of sound mind. For married man, the consent of his wife is must for adoption of child. In case of more than one wife, consent of all the wives is compulsory. If a Hindu male adopts a female child, he must be senior to her by at least 21 years, otherwise the adoption is Void.

### **Adoption by Hindu female**

In old law there was no such provision for Hindu female to adopt child. But after amendment in 2010 in Sec. 8 there undergoes a change. Now married woman can adopt child with the consent of her husband. Under Hindu Adoption and Maintenance Act 1956, a Hindu unmarried, widow or divorcee woman has capacity to adopt child.

**In AIR 2001 case Vikayalakshamma v. B.T Shankar** It was held that where widower adopts child in her own capacity. An unchaste woman (unmarried or widow) also has capacity to adopt. If female adopts male child, she must be senior to the child by at least 21 years.

### **Restrictive conditions for adoption**

There are some restrictive conditions which exist ~

#### **a) Adoption of son.**

If adopter adopting son, he must not Hindu son, grandson, or grandson's son. But if these all ceased to be a Hindu, an adoption of a son will be valid.

#### **b) Adoption of Daughter.**

New provision for adoption of daughter one must not have Hindu daughter or son's daughter. In old law there was no rule of daughter adoption. But if daughter or son's daughter ceased to be Hindu, adoption of daughter is valid then.

#### **c) Two people cannot adopt same child.**

Husband and wife are one in law. Two people can't adopt same child means child can't be continue natural family as well as in adopted family.

#### **d) Age difference between parents and child.**

If Hindu male or female want to adopt child of opposite sex, then he or she must be i age gap of 21year.

### **References.**

°Dr. Paras Diwan family law book.

°[https://en.m.wikipedia.org/wiki/Hindu\\_Adoptions\\_and\\_Maintenance\\_Act,\\_1956](https://en.m.wikipedia.org/wiki/Hindu_Adoptions_and_Maintenance_Act,_1956)

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