

ADOPTION UNDER HINDU LAW

- Adoption in the modern sense can be defined as transplantation of a person [boy or a girl] from the family in which he or she is born to another family where he is given by natural parents.
- Adoption is practice when an individual belonging to one kinship group acquires new kinship ties with another group i.e. from one family to another family.
- Another type of adoption is from orphanage to a family. Adoption could be for humanitarian reason (giving new opportunities to a neglected child or could be for natural desire of a child for reason of affection, caretaking in old age or for an heir after death.

Hindu Adoptions and Maintenance Act, 1956

- Prior to the Hindu adoption and maintenance act 1956 there was no clarity in law governing adoption. There were many customary laws on the issue. Only boys could be given in adoption and not girls.
- The Hindu adoption and maintenance act brings about a radical change in law of adoption as it bring out the secular aspect of the law
- The Act is prospective in nature and does not govern pre-Act adoptions.

Important Provisions of Adoption under HAMA, 1956[CHAPTER II]

Section 5:- Adoptions to be regulated by this Chapter

- (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.
- (2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

Section 6:- Requisites of a valid adoption.

- No adoption shall be valid unless.
 - (1) The person adopting has the capacity, and also the right, to take in adoption;
 - (2) The person giving in adoption has the capacity to do so;
 - (3) The person adopted is capable of being taken in adoption;
 - (4) The adoption is made in compliance with the other conditions mentioned in this Chapter.

Section 7:- Capacity of Male Hindu to take in Adoption

- Any male Hindu who is
 - (1) of sound mind and
 - (2) Is not a minor has the capacity to take a son or a daughter in adoption.
- Provided that, if he has a wife living, he shall not adopt **except with the consent** of his wife unless
 - (1) The wife has completely and finally renounced the world or
 - (2) Has ceased to be a Hindu or
 - (3) Has been declared by a court of competent jurisdiction to be of unsound mind.
- If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso. (Prior to Hindu marriage act, 1955 people had multiple wives so this explanation was there in this section, now in 2020 it's almost impossible to find a Hindu with multiple wives and soon this explanation not be of any practical use)

Section 8:- Capacity of a female Hindu to take in adoption.

- Any female Hindu who is
 - (1) Of sound mind and
 - (2) Is not a minor has the capacity to take a son or daughter in adoption

- If she has a living husband shall not adopt a son or daughter except with the consent of her husband unless
 - (1) The husband has completely and finally renounced the world or
 - (2) Has ceased to be a Hindu or
 - (3) Has been declared by a court of competent jurisdiction to be of unsound mind.
- Prior to the Personal Laws (Amendment) Act 2010, a female adult Hindu of sound mind could adopt a child under the following situations, viz., she is:
 - i. Unmarried;
 - ii. Divorced;
 - iii. Widowed; or
 - iv. Her husband suffers from certain disabilities viz., he has:
 - a. Ceased to be a Hindu;
 - b. Has renounced the world; or
 - c. Has been declared to be of unsound mind by a court
- After **The Personal Laws (Amendment) Act 2010**, however, a female right to adopt has been brought at par with the male's right

Section 9:- Persons capable of giving in adoption.

- Father or mother could give for adoption (with consent of the other)
- Father or the mother, if alive, shall have equal right to give a son or daughter in adoption [**Personal Laws (Amendment) Act 2010**]
- consent not required when other is
 - (1) Of unsound mind,
 - (2) Has renounced the world or
 - (3) Has ceased to be a Hindu
- Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption

with the previous permission of the court to any person including the guardian himself.

- Before granting such permission to a guardian, the court has to satisfy itself that:
 - i. The adoption is for the welfare of the child;
 - ii. The child's wishes have been ascertained;
 - iii. There is no financial consideration in the transaction.

Section 10:- Persons who may be adopted

- Essential conditions to be fulfilled
 - (1) He or she is a Hindu;
 - (2) He or she has not already been adopted;
 - (3) He or she has not been married, unless there is a custom or usage applicable to the parties which permits person who are married being taken in adoption;
 - (4) He or she has not completed the age of fifteen years, unless there is a custom or usage applicable completed the age of fifteen years being taken in adoption.

Section 11:- Other conditions for a valid adoption

- (1) If any adoption is of a son, the adoptive father or mother by whom the adoptions is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (2) If the adoption is of a daughter the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (3) If the adoption is by a male and the person to be adopted is a female, the adoptive father is at least **twenty-one** years older than the person to be adopted;

- (4) If the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least **twenty-one** years older than the person to be adopted
- (5) The same child may not be adopted simultaneously by two or more person;
- (6) The child to be adopted must be actually 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 or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption. Provided that the performance of *datta homam*, shall not be essential to the validity of an adoption.

Section 12:- Effect of Adoption

- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.
- Provided that-
 - a. The child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
 - b. Any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any attaching to the ownership property, including the obligation to maintain relatives in the family of his or her birth;
 - c. The adopted child shall not divest any person of any estate which vested in him or her before the adoption.
- Supreme Court in **Basavarajappa v. Gurubasamma, (2005) 12 SCC 290**, held that on adoption, adoptee gets transplanted in adopting family with the same rights as that of natural born son. Adopted child becomes coparcener in Joint Hindu Family property after severing all his ties with natural family,

Section 13:- Right of adoptive parents to dispose of their properties

- Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos (by gift) or by will.

Section 14:- Determination of Adoptive Mother in certain cases

- The wife of a Hindu male, who adopts is deemed to be the adoptive mother, where an adoption is made with the consent of more than one wife, the senior most in marriage is deemed to be adoptive mother and others as stepmother.
- In the case of adoption by a widower or bachelor, any woman whom he subsequently marries is the stepmother of the child Similarly, in case of adoption by a widow or an unmarried woman, any man whom she marries is deemed to be the step-father of the child
- **Sawan Ram v. Kalawati, AIR 1967 SC 1961**
 - ✓ Whether in case of an adoption by a widow would the adopted child be deemed to be the child of the deceased husband as well so as to be his heir?
 - ✓ The case involved succession to the properties of the widow's husband; the widow too died within two months after adoption
 - ✓ Referring to **s. 12** of the Act the court pointed out that from the date of the adoption all ties of the child in the family of birth are severed and new ties created in the adoptive family. It is well recognized that a married female belonged to the family of her husband and accordingly, the adopted child must also belong to the same family

Section 15:- Valid adoption not to be cancelled

- No adoption which had been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth

Section 16:- Presumption as to registered documents relating to adoption.

- Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed

by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

Section 17:- Prohibition of certain payments.

- (1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.
- (2) If any person contravenes the provisions of sub-section (i), he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.
- (3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorized by the State Government in this behalf.