

DAYANAND COLLEGE OF LAW, LATUR
FAMILY LAW I
LLB I (B)

The Hindu Adoptions & Maintenance Act, 1956

The Hindu Adoption & Maintenance Act was passed in 1956 & came into force on 21-12-1956. It extends to whole of India except the State of J & K & is applicable to Hindus. It deals with-

I) Adoption &

II) Maintenance

Structure

This Act contains 30 Sections.

Adoption

- Adoption is a practise when an individual belonging to one kinship group acquires new kinship ties with another group Le. from one family to another family.
- Another type of adoption is from orphanage to a family.
- Adoption could be for humanitarian reasons (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.

Adoption Under Hindu Law

Hindu Adoptions and Maintenance Act, 1956

- Prior to this legislation the adoptions were governed by customs and female adoption didn't even exist.
- The Act is prospective in nature and does not govern pre-Act adoptions

Important Provisions of HAMA, 1956

Section 6. Requisites of a valid adoption.

No adoption shall be valid unless-

- (i) the person adopting has the capacity, and also the right, to take in adoption;
- (ii) the person giving in adoption has the capacity to do so;
- (iii) the person adopted is capable of being taken in adoption; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

More conditions in section 11

Ceremonies of Valid Adoption-

Among Brahmins, Kshatriyas & Vaisyas a Datta Homam ceremony was required & in case of Shudras, the actual giving & taking was held necessary.

Under the present law, the only ceremony required is actual giving & taking of a child.

Case- *Lakshmi Singh v. Smt. Rupkunwar*, AIR 1961
SC 1378

Held, among Shudras no datta homam required.

Who May Adopt? (Sec. 7 & 8)

A) Capacity of Male (S. 7)-

- Any male Hindu who is of sound mind and 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 the wife has completely and finally 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.

➤ 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 its almost impossible to find a Hindu with multiple wives and soon this explanation would not be of any practical use

Case- Malati v. Sudhindranath, AIR 2007 Cal. 41

Held, a male is entitled to adopt but consent of his wife is necessary if he is married for valid adoption.

B) Capacity of Female (Sec. 8)-

Any female Hindu can adopt a child provided -

1. who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption
2. Provided that if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally 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.
3. If she adopts a male child, the age difference should be **21 years (Sec. 11)**.

Case – Ashoka Naidu v. Raymond, AIR 1976 Cal. 272.

Held, an unmarried woman having an illegitimate child also can make adoption.

A widow can make adoption.

Prior to the Personal Laws (Amendment) Act 2010,

A female adult Hindu 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.

C) Who May Give in Adoption (Sec. 9)-

I) Father – The father can not give the child in adoption without the consent of mother of the child.

Exceptions-

- i) If she has finally & completely renounced the world.
- ii) If she has ceased to be a Hindu, or
- iii) If she has been judicially declared to be of unsound mind.

In the absence of mother's consent, adoption is **void**.

The expression '**father**' does not include adoptive father, putative father or stepfather. The putative father even if subsequent to the birth of child marries with the mother of the child can not give child in adoption.

II) Mother – The mother of a legitimate child can give the child in adoption during the lifetime of the father in following cases-

- a) If the father has ceased to be a Hindu.
- b) If he has finally & completely renounced the world, or
- c) If he has been judicially declared to be of unsound mind.

The mother of an illegitimate child has power to give the child in adoption without the consent of putative father. But the mother of a legitimate child has during the lifetime of the father, no power to give the child in adoption even with the consent of the father.

The mother has power to give her legitimate child in adoption after the death of the father.

The expression mother does not include adoptive mother/stepmother.

The mother also does not lose her right of giving the child in adoption on divorce.

III) Guardian-

Where both the parents are dead, or are legally incompetent to give in adoption, then in that case, 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.

Cases – re Rasiklal v. Chhaganlal Mehta, AIR 1982 Guj.

The adoption was proposed to be made by a German couple converted to Hinduism & intended to take the orphan girl to Germany (Cross-country adoption). Adoption granted on following factors:

- A) whether the adoption is valid a/c to the law of foreign country involved.
- B) whether the adopted can acquire the nationality of the adopter & will be permitted to immigrate to that country.
- C) periodical reports to the court regarding the maintenance & welfare of the adoptee.

St. Thomas Mount Babies Home Holy Apostles Convent (2006)

Held, a Foster Care Home can maintain an application u/s 9 of the act as it is the guardian . It can give a minor child in adoption with the permission of the Court.

D) Persons, who may be adopted (Sec. 10) –

Essential conditions to be fulfilled

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

Other Conditions for Valid Adoption (S. 11) -

- I) If the adoption is of a son, the adoptive father or mother 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.
- II) If the adoption is of a daughter, the adoptive father or mother must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption.
- III) If the adoption is by a male & the adoptee is a female, the adoptive father is at least 21 years older than the adoptee.
- IV) If the adoption is by a female & adoptee is a male, the adoptive mother is at least 21 years older than the adoptee.

- V) The same child may not be adopted **simultaneously** by two or more persons.
- VI) The adoptee must be **actually given & taken in adoption** by the parents or guardian or under their authority with intent to transfer the child from the family of its birth to the adoptive family.
- VII) **Datta homam shall not be essential** to the validity of an adoption.

Case- Sandhya v. UOI, AIR 1998 Bom. 228

Held, **Sec. 11 not violative of Art. 14 & 21 of the Constitution.** It prevents adoption of more than one child belonging to the same gender.

Effects/Consequences of Adoption (S.12)

An adopted child is deemed to be the child of his/her adoptive father/mother for all purposes from the date of adoption. All the ties of birth family sever & replaced by those of adoptive family provided that-

- I) The child cannot marry any person whom he/she could not have married if he/she had continued in the birth family.
- II) Any property which vested in adoptee before adoption shall continue to vest subject to obligations if any attached thereto, including the obligation to maintain relatives in the birth family.
- III) The adoptee shall not divest any person of any estate which vested in him/ before the adoption.

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

➤ Subject to any agreement to the contrary, on adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer (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

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 (1), 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.