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Learn About Adoption under Hindu Law

Harshita Gulati · 31 Oct 2021

Adoption is the act of a person taking as his lawful child a person who is not in fact his child. There is no uniform law on adoption in India. Only Hindus which includes Buddhists, Jain and Sikhs have legal provisions for adopting children. The other communities namely Muslims, Christians, Parsis and Jew do not have any law of adoption available to them.

The objects of adoption are two-fold: firstly, religious to secure the spiritual benefit to the adopter and his ancestors by having a son to offer funeral cakes and libations of water. Secondly, secular to secure an heir and perpetuate the name of the adopter

Adoption is the transplantation of a child from the family in which he is born, to another family where he is given by the natural parents or guardian by way of gift. The adopted child is taken as being born in the new family and acquires rights and duties of their only and his ties with the old family come to an end.

The Hindu Adoption and Maintenance Act 1956 made a radical departure from the old Hindu law and allowed the adoption of a daughter as in old Hindu law only sons could be adopted. The Act also specified that for a valid adoption no performance of religious ceremonies such as ‘datta homam’ is required; adoption shall be valid by the actual giving and taking.

All adoptions made after the Act came into force are to be regulated and governed by the provisions of the Act. Section 5 of the Act states that if the adoption is not made in accordance with this Act, the adoption shall be void and that it shall create no rights.

Section 6 states the requisites of a valid adoption as being:

- The person taking in adoption must have the capacity and the right to take in adoption
- Person giving must have the capacity
- A person adopted must be capable of being given in adoption
- That the adoption must comply with other conditions



Under the Act any Hindu who is major and of sound mind whether married man (with the consent of other spouse) or unmarried can validly adopt a child provided:

- If the adoption is of a son, the adoptive father or mother should not have a Hindu son, son's son or son's son's son (whether legitimate or by adoption) living at the time of adoption. Existence of an illegitimate son or a stepson is not a bar in order to adopt a son.
- If the adoption is of a daughter, the adoptive father or mother should not have a Hindu daughter or son's daughter (whether legitimate or by adoption) living at the time of adoption.
- There must be a gap of 21 years of age if the adoptive child and adopting parent belongs to the different sex.
- The same child may not be adopted by two or more persons simultaneously.

Who may give a child in adoption?

A child can be validly given into adoption only by the father and mother.

- If the father is alive then shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother. The expression ‘father’ here does not include an adoptive father, putative father or the stepfather.
- The mother may give the child in adoption if the father is dead or has renounced the world or has ceased to be a Hindu or has been declared as unsound by the court. The mother of an illegitimate child has the power to give the child in adoption even without taking the consent of the putative father. The expression ‘mother’ does not include a stepmother or adoptive mother. A married woman has the right to give away in adoption the child born from her deceased husband.
- When both father and mother are is dead or have renounced the world or have ceased to be a Hindu or have been declared as unsound by the court 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. The court shall grant such permission only when it is satisfied that such adoption is for the benefit of the child.

Who may be taken into adoption?

No person shall be taken into adoption unless the following conditions are fulfilled:

- He or she is a Hindu
- He or she has not already been adopted
- He or she has not been married (unless a custom or usage permits such adoption)
- He or she has not completed the age of 15 years (unless a custom or usage permits such adoption)

If a child is adopted from an orphanage it has to be seen whether the child has been brought up as a Hindu or not.

Effects of adoption:

- An adopted child shall be deemed to be the child of the adoptive family for all purposes from the date of adoption and from such date all his ties from the family of birth shall be deemed to be severed.

- The adoptive child cannot marry any person whom he/she could not have married if he/she had continued to stay in the family of birth.
- Any property which vested in the adoptive child before the adoption shall continue to vest in such person subject to the obligations.
- An adopted child shall not divest any person of any estate which vested in him or her before adoption.
- No adoption which has been validly made can be cancelled by the adoptive father or mother.
- No written or registered document is necessary for a valid adoption.

Relationship of Adopted Child

- Where a Hindu who has a wife living adopts a child she shall be deemed to be the adoptive mother
- Where an adoption has been made with the consent of more than one wife, senior-most in marriage among them shall be deemed to be the adoptive mother and the others to be the stepmother
- Where a widower or a bachelor adopts a child any wife whom he subsequently marries shall be deemed to be the stepmother of the adoptive child
- Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the stepfather of the adopted child

When a widow or divorced woman or man or a widower adopts a child there is no relationship whatever with the ex-spouse or deceased spouse of the adopter.

The fact of adoption has to be proved in the same way as any other fact under the Evidence Act there are no special rules. The burden of proof lies on the person who alleges such adoption. The registration of documents relating to adoption is optional.

In India, there is no legislation for intercountry adoption.

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First published on November 1, 2020.