NOTES

Adoption under Hindu Adoptions and Maintenance Act, 1956

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The Hindu Adoptions and Maintenance Act, 1956 codifies the law relating to adoption among Hindus, replacing the earlier uncodified customary and shastric rules that varied significantly across schools and regions. Let's read more about adoption under Hindu Adoption and Maintenance Act, 1956.

Section 2 *extends its application to Hindus, Buddhists, Jains, and Sikhs, and also to any person domiciled in India who is not a Muslim, Christian, Parsi, or Jew, unless it is proved that such a person would not have been governed by Hindu law before the Act came into force.*

This codification brought uniformity to adoption law while still preserving the essential religious and social character of the institution.

Essentials of a Valid Adoption: Section 6

Section 6 lays down four essential conditions for a valid adoption.

- The person adopting must have the capacity and the right to take in adoption,
- The person giving in adoption must have the capacity to do so,
- The person adopted must be capable of being taken in adoption, and
- The adoption must comply with the other conditions mentioned in the Act.

Failure to satisfy any of these essential conditions renders the adoption void, since these requirements operate cumulatively rather than in the alternative.

Capacity of a Male to Adopt: Section 7

Section 7 permits any male Hindu *who is of sound mind and not a minor* to adopt a son or daughter, **subject to the condition that if he has a living wife at the time of adoption**, he *must obtain her consent unless she has completely and finally renounced the world*, ceased *to be*

a Hindu, or has been declared by a competent court to be of unsound mind.

Where a *male Hindu has more than one wife living at the time of adoption*, the **consent of all the wives becomes necessary**, unless any of them falls within the exceptions provided under this Section. This provision reflects the shift from adoption as a purely male prerogative toward requiring shared spousal decision-making within the marital relationship.

Capacity of a Female to Adopt: Section 8

Section 8 confers upon any *female Hindu who is of sound mind, not a minor, and either unmarried or whose marriage has been dissolved, or whose husband is dead, has completely and finally renounced the world, has ceased to be a Hindu, or has been declared by a competent court to be of unsound mind, the independent capacity to adopt a son or daughter.*

This provision was **significantly amended in 2010 to grant all married women, with husband's consent, an independent right to adopt**, since the unamended provision had previously denied married women any independent capacity to adopt in their own right.

Persons Capable of Giving in Adoption: Section 9

Section 9 identifies who may **lawfully give a child in adoption, generally vesting this right in the child's father and mother,** or the *surviving parent, subject to the other's consent, unless that other parent falls within the same categories of disability recognised elsewhere in the Act, such as renunciation, ceasing to be a Hindu, or being declared of unsound mind.*

Where both parents are dead, have completely and finally renounced the world, have abandoned the child, have been declared of unsound mind, or where the parentage of the child is unknown, **the guardian of the child may give the child in adoption with the prior permission of the court.**

The court, before granting such permission, must satisfy itself that the adoption serves the *welfare of the child, giving due consideration to the wishes of the child having regard to their age and understanding.*

Requisites of a Valid Adoption: Section 10

Section 10 lays down conditions relating to the child who may be validly adopted. *The child must be a Hindu, must not already have been adopted, must not be married unless a custom or usage applicable to the parties permits the adoption of married persons, and must not have completed the age of fifteen years unless a custom or usage applicable to the parties permits the adoption of persons who have completed that age.*

These conditions ensure that the child possesses a status and background consistent with the religious and social character the Act seeks to preserve within the adoptive family.

Other Conditions for a Valid Adoption: Section 11

Section 11 imposes *further conditions depending on the gender of the child being adopted and the gender of the adoptive parent.*

If the adoption is of a son, the adoptive father or mother must not have a living Hindu son, son's son, or son's son's son, whether by legitimate blood relationship or by adoption, at the time of the adoption.

Similarly, **if the adoption is of a daughter**, the adoptive father or mother must not have a living Hindu daughter or son's daughter at the time of adoption, and where a male Hindu adopts a female child, ***the adoptive father must be at least twenty-one years older than the child, with an identical age requirement applying where a female Hindu adopts a male child.***

HAMA explicitly states that the physical act of giving and taking is mandatory, but ***the performance of datta homam is not essential*** *to the validity of an adoption under the Act.*

Effects of Adoption: Section 12

Section 12 provides that an a*dopted child is deemed to be the child of their adoptive parents for all purposes with effect from the date of adoption, and from that date, all ties of the child with their family of birth are severed, replaced by ties created with the adoptive family.*

The provision carves out three important provisos:

- the adopted child cannot marry any person whom they could not have married had they continued in their birth family,

- any property vested in the adopted child before adoption continues to remain vested in them subject to obligations attached to such property including maintenance obligations toward birth family members, and
- the adopted child cannot divest any person of estate vested in them before the adoption takes place.

This Section thus balances the complete transplantation of the child into the adoptive family with limited protections preserving pre-adoption vested interests.

Right of Adoptive Parents to Dispose of Property: Section 13

Section 13 clarifies that, subject to any contract to the contrary, an *adoption does not deprive the adoptive father or mother of the power to dispose of their property by transfer inter vivos or by will.*

This provision preserves testamentary and transactional freedom for adoptive parents, ensuring that adoption does not automatically create indefeasible property expectations in favour of the adopted child during the adoptive parents' lifetime.

Determination of Adoptive Mother in Certain Cases: Section 14

Section 14 addresses situations of complexity in determining the adoptive mother, *such as where a bachelor or widower adopts a child, in which case any wife he subsequently marries is deemed the stepmother of the adopted child.*

Where a widow or an unmarried woman adopts a child, any husband she subsequently marries is deemed the stepfather of the adopted child, and correspondingly, where a married person adopts with the consent of their spouse, the spouse is deemed the adoptive mother or stepfather as the case may be.

These provisions clarify parental status within blended or subsequently formed families following an adoption.

Irrevocability of Adoption: Section 15

Section 15 provides that a **valid adoption cannot be cancelled by the adoptive father or mother, nor can the adopted child renounce their status as such and return to the family**

of their birth.

This principle of irrevocability underscores that adoption under Hindu law creates a permanent and complete legal transformation of the child's family status, distinguishing it from arrangements that might otherwise be treated as temporary or reversible guardianship.

Presumption Relating to Registered Documents: Section 16

Section 16 creates a rebuttable presumption that, whenever any document registered under law purporting to record an adoption made and signed by the person giving and the person taking the child in adoption is produced before any court, *the adoption recorded in such document is presumed to have been made in compliance with the provisions of the Act, unless and until it is disproved.*

This presumption significantly eases the evidentiary burden on parties seeking to establish the validity of an adoption, particularly in matters arising long after the adoption itself took place.

