
ADOPTION UNDER HINDU LAW: LEGAL AND SOCIAL PERSPECTIVES IN MODERN INDIA

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ABSTRACT

Adoption is a socially and legally recognized practice that gives kids loving, stable homes. The welfare of adoptive parents and adoptive children is guaranteed by the Hindu Adoptions and Maintenance Act, 1956 (HAMA), which creates a systematic and legally solid framework for adoption among Hindus. The Act's emphasis has shifted from religious duties to child care as it has developed over time to meet the demands of modern society. The law outlines the legal ramifications of adoption and provides explicit qualifying requirements for adoptive parents and children. But even with these developments, there are still some legal ambiguities, especially when it comes to prohibitions based on gender and the exclusion of LGBTQ+ people from adoption rights.

Introduction

Adoption is legally and socially accepted institution that facilitates happy and healthy homes for children. Hindu adoption and maintenance act purely deals with the validating a legally sound and secure system of adoption for children among Hindus. Throughout the years, the Act has progressed to fit the times, treating adoption as a way of giving homes to impoverished children and not just as a religious duty. The law has clear definitions regarding who can adopt, who can be adopted, and the law surrounding adoption. In spite of these developments, there are a number of uncertainties that remain, including the differential treatment of women and homosexual couples in adoption rights. The following paper critically analyses the provisions of the Act, its judicial interpretations, and the necessity for legislative amendments to cope with contemporary challenges.

Analysis-

Motive of the Law-

The ancient Hindu law looked at adoption as pious rather than a secular act though there has been a dispute as to whether the secular motive or the religious motive that dominates adoption in India.¹ The law today has clearly departed from the old notions and has emerged as a secular institution wherein there is no requirement of a religious ceremony for adoption. Though the court doesn't require to inquire into the motives of adoption but the purpose of modern adoption law is also providing homes to surrendered, abandoned and orphan. The same has been dealt with in the Juvenile Justice act.²

Common requirements of Adoption-

Nobody can adopt who is under the age of 18 i.e. he or she is a minor or he or she is of unsound mind. Unsoundness of mind here is the general condition of the human mind and not anything which has to be sanctioned by the court of law. A Hindu male or female, married under secular act have a special capacity to adopt.³

¹ Paras Diwan, *Family Law* (14th ed. 2025).

² *The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India).*

³ *Hindu Adoptions & Maintenance Act, 1956, § 6, No. 78, Acts of Parliament, 1956 (India).*

Adoption by a Hindu Male-

“A major Hindu male” who is of “sound mind can adopt” regardless of marital status but if he is married the consent of the wife must be obtained. “In case he has more than one wife the consent of all the wives” essential though only the first wife will be the mother of the child and others will be stepmothers. “Adoption made without the consent of wife is void”. Consent can either be implied or express. But a single male cannot adopt a female until and unless he is at least 21 years senior than her. The wife’s consent can only be vitiated under three circumstances namely-

- 1) The wife has ceased to be a Hindu
- 2) She has renounced the world completely or
- 3) She has been declared a person of unsound mind by the court of competent jurisdiction.”

Adoption by a Hindu Female-

By an amendment in 2010⁴- section 8 a married woman can now adopt by herself with due consent of her husband and also with certain conditions which are also applicable on her husband. In the case of *Radha Krishna V Shayam Sunder*⁵, the issue was centred around the “capacity of a Hindu Female to take a son in adoption” when she already has her stepsons after the demise of her husband. The adoption by the woman was under challenge. The court in its verdict held that a Hindu female has a capacity to adopt under section 8 of the Hindu Adoption and Maintenance act of 1956.⁶ Section 11⁷ of the same act a woman cannot adopt if she has a “Hindu son, son’s son or a great grandson.” A step son of the woman cannot be regarded as her son and hence she is still eligible to adopt. There is no bar to the adoption of the son.⁸

The right to adoption can be restricted in case of –

If a person wants to adopt a son then at the time of adoption the adopter mustn’t have a son,

⁴ M. Asad Malik & Nupur Goel, *Women’s Right to Adopt and to Be Adopted Under the Personal Laws: An Overview*, *ILJ L. Rev.* 179 (Summer 2023).

⁵ *Radha Krishna Mohapatra vs Bhuyan Sri Shyam Sundar Mohapatra and others* AIR1964OR1136.

⁶ B.K. Sharma, *Hindu Law*, 7 JILI 519 (1965).

⁷ *Hindu Adoptions & Maintenance Act, 1956*, § 11, No. 78, *Acts of Parliament, 1956 (India)*.

⁸ *Kusum, Gender Bias in Adoption Law: A Comment on Malti Roy Chowdhury v. Sudhindranath Mujumdar*, 49 JILI 76 (2007).

grandson or a great-grandson alive at the time of adoption as he won't be considered eligible for adoption. Even if the existing son was adopted the adopter cannot adopt another son. "Moreover, if a Hindu wishes to adopt a daughter, he shouldn't have a Hindu daughter or his son shouldn't have a daughter." This also implies that a daughter can be adopted if a son's daughter or own daughter has ceased to be a Hindu. No two people can adopt the same child. Two persons here connotes here any relationship other than husband and wife like brother and sister or sister and sister.⁹ The adoption will be rendered void if the child is not at least 21 years younger to the adopter. This is embedded in section 11 sub clause (3) and (4).¹⁰

"Who may give in adoption?"

According to the modern law Mother, Father or the guardian can give a child for adoption. Earlier only the mother and Father were licensed under law to do so. Here father can only give the child in adoption only if he has obtained the consent of his wife for the same.¹¹ Here, father doesn't mean putative father, adoptive father or stepfather. The putative father will not fit in the definition of father even if he marries the mother of the child subsequent to birth as Hindu law doesn't recognise legitimisation of the child. The consent of the mother can be vitiated or considered immaterial under three circumstances—

- 1) In case she has been declared of Unsound mind by a court of competent jurisdiction.
- 2) She has renounced the world wholly or partially.
- 3) She has ceased to be a Hindu.¹²

Just like the father of the child the mother has also been conferred equal rights to give her child in adoption after the amendment. The mother is allowed to give the child in adoption with the consent of her husband if she is married and in case, she has an illegitimate child she need not take the consent of the putative father. However, the consent of the husband shall be immaterial if he ceases to be a Hindu, has renounced the world completely or partially or he has been declared a person of unsound mind by the court of competent jurisdiction. If the father of the

⁹ *Supra* (note 1)

¹⁰ *Hindu Adoptions & Maintenance Act, 1956, § 11(3) & (4), No. 78, Acts of Parliament, 1956 (India).*

¹¹ *Hindu Adoptions & Maintenance Act, 1956, § 9, No. 78, Acts of Parliament, 1956 (India).*

¹² *Supra* (note 1)

child dissents or declines to give the child in adoption it wouldn't be of any consequence.

A guardian is also eligible to give the child in adoption. Here, the guardian may include De Facto and De Jure both. He is only eligible to do so when:

- 1) both the parents have been declared to be of unsound mind by court of competent jurisdiction
- 2) Both of them have renounced the world
- 3) The parentage of the child is unknown
- 4) The child has been abandoned by both the parents or
- 5) Both the parents of the child are dead.

Who may be given in adoption?

There are four requirements for a child to be adopted under the act namely - Firstly, that the child being given in adoption must be a Hindu¹³. Secondly, that the child mustn't be above the age of fifteen years of age. Moreover, the child should be unmarried. The child has not been adopted earlier. And the child so given in adoption must not be adopted prior under any law of the land as this might create instability in the life of the child.

Procedure of Adoption-

A party seeking to adopt may approach a Child Welfare Agency under the Hindu Adoption and Maintenance Act, 1956. Registration is done either by an Adoption Coordinating Agencies located at state capitals or CARA-empanelled organisations. The adoption agency conducts interviews with the couple to ascertain the couple's intent. Once permission is granted, the couple may file a petition before the appropriate court and choose a child. The court issues a judgment to complete the adoption after making a decision about the case after two months.¹⁴

¹³ *Kumar Sursen v. State of Bihar & Ors.*, AIR 2008 Pat 24 (India).

¹⁴ *Central Adoption Resource Authority, Guidelines Governing Adoption of Children, CARA/Guidelines/2025 (Issued on Jan. 15, 2025) (India).*

Social perspectives-

Research observes that “the basic argument advanced is that adoptees are necessarily, by virtue of their transfer to an adoptive family, especially susceptible to identity conflicts and especially prone to problems in personality development.”¹⁵ These are some of the social perspectives on adoption which we can comprehend through the research conducted. But adoption in modern India has been given a wide acceptance and it has departed from its traditional understanding.

In the present context adoption is streamlined by CARA rules which makes sure that the child so adopted gets right care and love from the adoptive parents.¹⁶ But in adoption “the question is - for how many generations those children have to wait for admission into the community?

The adoption would be the only choice that would remove the caste factor to a greater extent. Likewise, there are several other factors which still persist.¹⁷ But due to the modern laws consideration for adoption has been considered illegal.”¹⁸

Recommendations and challenges-

As per section 7 of the act¹⁹ there are two criticisms in the concept of adoption by a Hindu male. An anomaly here is that if the wife has ceased to be the wife of the father and the father is unwilling to mutual divorce²⁰ then it will be cumbersome for the wife as her consent is not legally required for adoption by the father. This is one of the major lacunas in the act.²¹ A simple suggestion here would be to amend the provision suggesting that there must be a valid divorce or a decree obtained by the court for judicial separation to vitiate the consent of the wife for adoption so as to not burden her with responsibility of a child.

Secondly if only first wife will be the adoptive mother of the child, then it is redundant that the consent of all other wives is required. The requirement has been laid down in section 14(2) of the Hindu adoption and maintenance act.²² Further section 11 (v) of the same act lays down the

¹⁵ Elizabeth Bartholet, *Family Bonds: Adoption, Infertility, and the New World of Child Production* 171 (1993).

¹⁶ *Supra* (note 10).

¹⁷ N. Balu, *Adoption – Some Unsolved Issues*, 45 JILI 537 (2003).

¹⁸ *Hindu Adoptions & Maintenance Act, 1956, § 17, No. 78, Acts of Parliament, 1956 (India)*.

¹⁹ *Hindu Adoptions & Maintenance Act, 1956, §7, No. 78, Acts of Parliament, 1956 (India)*.

²⁰ *Hindu Marriage Act, 1955, § 13B, No. 25, Acts of Parliament, 1955 (India)*.

²¹ Vaibhvee Jangid, *Loopholes in Various Family Laws and the Need for Their Rectification*, 2.4 JCLJ 515 (2022).

²² *Hindu Adoptions & Maintenance Act, 1956, §14, No. 78, Acts of Parliament, 1956 (India)*.

categories wherein adoption is prohibited by two people unless and until they are husband and wife or the relationship which is in the nature of marriage.²³

This may also include two persons in a live-in relationships. But this is problematic for same sex couples as adoption by one partner will not create any rights and liabilities for the other person. This problem can either be solved by creating an exception for same sex couples, legalising their marriage or recognising civil unions in this act. This invades the homosexual couples from their chance of having a family thereby taking away their basic fundamental right to life and liberty.

Conclusion

The act has played a quintessential role in the legal scenario of adoption amongst Hindus in India. Though it has managed to evolve from being a religious law to a secular one, there are very important areas to be reformed. Gender discrimination in adoption rights, prohibition against same-sex couples, and uncertainty regarding consent conditions are some of the concerns which call for legislative changes to make it more inclusive and equitable. By addressing these issues, the law can further be brought in line with changing societal mores and international norms on child welfare and adoption. The future of adoption law in India should aim to strengthen the rights of adoptive parents without undermining the best interests of children and, in the process, build a more progressive and just legal framework.

²³ *Hindu Adoptions & Maintenance Act, 1956, §11 (5), No. 78, Acts of Parliament, 1956 (India).*