

---

## **A STUDY ON ADOPTION BY HINDU MARRIED WOMAN**

---

V.C. Megha & Aarthi Shankar, B.A.,L.L.B (Hons.), Saveetha School of Law  
Saveetha Institute of Medical and Technical Science, Saveetha University, SIMATS

### **ABSTRACT:**

In this paper we will be seeing about adoption by a Hindu married woman under the HINDU ADOPTION AND MAINTENANCE ACT 1956. The Adoptions and Maintenance Act of 1956 dealt specifically with the legal method of adopting kids by a Hindu adult, and with the legal obligations of a Hindu to produce "maintenance" to numerous members of the family together with their married woman or wives, parents, and in-laws. In this paper, I conducted a survey through a well structured questionnaire. About 1629 people answered the survey on the questions relating to adoption by a Hindu women. The result for my research has turned out to be positive.

**Keywords:** Hindu married woman, HAMA 1965, Family, Survey, Adoption.

**INTRODUCTION:**

Hindus believed that one who died not having a son would attend hell referred to as poota, and it absolutely was solely a son who can save the father from reaching to poota (Rose 1922). This was one in all the explanations to be get a son. In the Hindu shastras, it absolutely was aforementioned that the adopted son ought to be a mirrored image of the natural son (Burrows 1991). This secured protection and took care of the adopted son. He wasn't simply adoptive folks, however all relation on the parental and maternal facet within the adoptive family additionally came into existence this implies he cannot simply say the female offspring was naturally born or adopted (Ross 2006). It's interesting to understand that whereas Muslims and Parsee personal laws don't acknowledge the thought of adoption, Hindu law, from the foremost history, had elaborate provisions on adoption. Even the traditional Greek and Roman system recognized adoption.(Rattigan 1873).Currently, the adoption below Hindu law is ruled by the Hindu adoption and Maintenance Act, 1956. This Act applies solely to Hindus to not Muslims. It came into effect from the twenty-first Gregorian calendar month, 1956. The uncodified Hindu law recognized twelve styles of sons, of which 5 sorts were adopted sons. below the written law, a female offspring couldn't be adopted. The Hindu Adoption and Maintenance Act, 1956, recognized adoption to each son and a female offspring. This Act has additionally led to safe modification within the earlier uncodified Hindu law of adoption and maintenance (Rattigan 1873; Gardner 1881) . The aim of the study is to know completely about the adoption by Hindu women.

**OBJECTIVES OF THE STUDY:**

The objectives of the study is to

- Know the essentials for Hindu adoption by women and men
- Analyse the married woman's qualifications on adoption
- Know the public's knowledge on adoption by Hindu married woman.

**REVIEW OF LITERATURE:**

Under this act solely Hindus could adopt subject to their fulfilment of certain criterions. The primary of those asserts that the parent has the right to (under this Act that will mean they're a

Hindu). Next, they need to own the capability to be ready to offer for the adopted kid. Third the kid should be capable of being adopted. Lastly, compliance with all alternative specifications should be met to form the adoption valid.(Rattigan 1873; Gardner 1881; Flåten 2016). Men can adopt if they have the consent of the wife .The sole method of obtaining the permission of the wife is that if she is unsound, if she has died, if she has fully and eventually renounced the world, and if she has ceased to be a Hindu. Men who are unmarried will adopt yet as long as they're not minors. However, if a person were to adopt a girl, the person should be twenty one years old or older.(H. C., H., and Srinivasa Aiyar 1912). Only unmarried Hindu women can legally adopt. A married person will solely provide her consent to adoption by her husband. A married person whose husband adopts is to be thought-about the mother. If the child is adopted and there are more than one wife living in the household, then the senior wife is classified as the legal mother of the adopted child (H. C., H., and Srinivasa Aiyar 1912; Frazier 2015). Section 7 and 8 talks about the male and female qualifications to adopt and the consent to adopt but there is a wide gap between these sections which discriminates against a married Hindu female. There is no such thing like a major, sound minded married female can adopt a child with the free consent of her husband and also the consent is not required if the husband has renounced the world, or the Hindu faith or has been declared to be of unsound mind by a court. Brajendra Singh's case 96 which projects some highly emotional and sensitive aspects of human life. In this case Honourable Supreme Court observed that there was no dispute that Mishri Bai was a disabled lady living separately from her husband right from the day of her marriage and in fact had been looked after by Brajendra Singh whom she adopted. The court observed that all the evidence showed that husband and wife had been staying separately for a very long time and that Mishri Bai was living a life like a divorced woman. The court categorically declared that there was a conceptual and contextual difference between a divorced woman and one who was living the life like a divorced woman. Mishri Bai may have been living separately since the time of her marriage but there was no dissolution of marriage, that is, divorce. Thus Mishri Bai did not have the capacity to adopt under HAMA (Marsh 2005). In a recent decision on 4th September, 2006, it was held by the Kolkata High Court that during subsistence of a marriage a wife has no right to adopt but only to give consent in the adoption process if taken by her husband. In this case the husband never took any initiative for the decision to adopt. He was only present. So the adoption made by the married woman was held invalid (Stephenson 2006). Denial of this right to adopt a child to any married female Hindu (till the passing of the Personal Laws (Amendment) Act, 2010); it seems to me is a clear violation of Fundamental Rights guaranteed by our Constitution as well as the

precious rights guaranteed by the Universal Declaration of Human Rights and other various international documents to which India is also a signatory (H. C., H., and Srinivasa Aiyar 1912; Frazier 2015; Dev 2010). After the famous Maneka Gandhi case, article 21 proved to be multi-dimensional. It includes in the ambit of this case that the right to live with human dignity is also a fundamental right. Therefore, the right to life or the right to live with human dignity includes in itself the right to make one's own family. It seems to me highly unjust and unreasonable to deprive any person to make his or her family only on the ground of his or her marital status.(H. C., H., and Srinivasa Aiyar 1912; Frazier 2015; Dev 2010; Derrett 1977).

## **MATERIALS AND METHODS:**

### **RESEARCH METHODOLOGY:**

Empirical research is based on observed and measured phenomena and derives knowledge from actual experience rather than from theory or belief. Key characteristics for an empirical research are specific research questions to be answered and description of the process used to study this population or phenomena, including selection criteria, controls, and testing instruments( such as surveys ). **The research is based on empirical study and the sampling method is random sampling method The sample size is 1629** .The statistics are frequency and chi square and Anova. The research is done in chennai by questionnaire method.The present paper used both primary and secondary information. The primary information was collected from the general public .The well structured questionnaire about problems of inter-caste marriages. The secondary information for the study was collected from the articles, journals, newspapers, legislations, rules.

## **HYPOTHESIS**

**Null hypothesis:**There is no significant differences between educational qualification and adoption by a Hindu married woman.

**Alternate hypothesis:**There is significant differences between educational qualification and adoption by a Hindu married woman

### **Independent variable:**

1. Educational qualification

**Dependent variables:**

1. Do you know that a Hindu married women cannot adopt on her own?
2. Whether consent is an essential element in adoption when it comes to a married woman?

**ANALYSIS:****FREQUENCY TABLE:**

TABLE 1:

**Educational Qualifications**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid higher secondary	485	29.8	29.8	29.8
bachelor degree	889	54.6	54.6	84.3
master degree	255	15.7	15.7	100.0
Total	1629	100.0	100.0	

**DATA TABLE 1:****Crosstab**

Count

		Hindu married women cannot adopt on her own		Total
		yes	no	
Educational Qualifications	higher secondary	238	247	485
	bachelor degree	430	459	889
	master degree	171	84	255
Total		839	790	1629

**Chi-Square Tests**

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	29.348 <sup>a</sup>	2	.000
Likelihood Ratio	29.926	2	.000
Linear-by-Linear Association	14.975	1	.000
N of Valid Cases	1629		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 123.66.

The chi square test value is less than 0.05, so here my alternative hypothesis is accepted.

**HYPOTHESIS**

**Null hypothesis:** There is no significant differences between educational qualification and adoption by a Hindu married woman.

**Alternate hypothesis:** There is significant differences between educational qualification and adoption by a Hindu married woman.

**DATA TABLE 2:****Crosstab**

Count

		Consent is an essential element in adoption when it comes to a married woman		Total
		yes	no	
Educational Qualifications	higher secondary	280	205	485
	bachelor degree	469	420	889
	master degree	158	97	255
Total		907	722	1629



**Chi-Square Tests**

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	29.348 <sup>a</sup>	2	.000
Likelihood Ratio	29.926	2	.000
Linear-by-Linear Association	14.975	1	.000
N of Valid Cases	1629		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 123.66.

The chi square test value is less than 0.05, so here my alternative hypothesis is accepted.

**HYPOTHESIS**

**Null hypothesis:** There is no significant differences between educational qualification and adoption by a Hindu married woman.

**Alternate hypothesis:** There are significant differences between educational qualification and adoption by a Hindu married woman.

**DISCUSSION:**

Using **chi-square test** the p value is found to be more than 0.05 The analysis Table is based on

the answers of General people in the nearby locality. This analysis has shown the knowledge of people on adoption by Hindu married women. We collected answers from around 1629 people. In which people were segregated based on their age, educational qualifications, gender and occupation. The questions that this research focuses on is Do you know that a Hindu married woman cannot adopt on her own and Whether consent is an essential element in adoption when it comes to a married woman. For the first question 70% answered YES for the question and about 30 % answered NO. The **alternative hypothesis** is proven to be positive.

## **CONCLUSION:**

Hindu Law Concept of Dharma is a body of principles or rules called 'Dharma'. Dharma according to Hindu texts embraces everything in life. According to the Hindus, 'Dharma' includes not only what is known as law in the modern sense of the term but all rules of good and proper human conduct. Dharma is used to mean justice what is right in a given circumstance, moral, religious, pious or righteous conduct, being helpful to living beings and things, duty, law and usage or custom having in the force of law and also a valid Raja sasanka Origin. The Adoption of Children Bill, 1972 and the Adoption of Children Bill, 1980 were placed for consideration but failed to enter in our statute book due to different reasons (Thapar and Cormack 1964). Till today after such a long gap we are unable to frame a uniform law dealing with all civil matters including adoption(Thapar and Cormack 1964; M. E. C., M., and Ramabai 1902). Thus, we are in strong need of Uniform Civil Code dealing uniformly with civil matters or at least a Uniform Adoption Code dealing uniformly with adoption related matters irrespective of religion , sex, marital status or anything which should not come in the way of proper and due realization of basic human right.(Purwar, Shankar, and Kumari 2018)

**REFERENCES:**

1. Bhalla, C. K. 1978. "Adoption: Medical and Legal Aspects." *Indian Pediatrics* 15 (6): 523–27.
2. Bhargava, Vinita. 2005. *Adoption in India: Policies and Experiences*. SAGE.
3. Burrows, David. 1991. "Adoption, Wardship and Access — Now and under the Children Act." *Adoption & Fostering*. <https://doi.org/10.1177/030857599101500113>.
4. C., H., C. C. H., and S. Srinivasa Aiyar. 1912. "The Leading Cases on Hindu Law. Part I, Adoption-Capacity." *The Yale Law Journal*. <https://doi.org/10.2307/785919>.
5. C., M. E., E. C. M., and Pandita Ramabai. 1902. "The High-Caste Hindu Woman." *The American Journal of Nursing*. <https://doi.org/10.2307/3401856>.
6. Derrett, John Duncan Martin. 1977. *Essays in Classical and Modern Hindu Law: Anglo-Hindu Legal Problems*. BRILL.
7. Dev, Kohli Hari. 2010. *Supreme Court On Hindu Law*. Universal Law Publishing.
8. Flåten, Lars Tore. 2016. "Hindu Nationalism, History and Identity in India." <https://doi.org/10.4324/9781315617695>.
9. Frazier, Jessica. 2015. "Vedāntic Traditions in Hindu Studies." *The Journal of Hindu Studies*. <https://doi.org/10.1093/jhs/hiv013>.
10. Gardner, D. M. 1881. *The Hindu and Roman Law of Adoption: A Dissertation*.
11. Liebesny, Herbert J., S. V. Gupte, and J. D. M. Derrett. 1972. "Hindu Law of Adoption, Maintenance and Guardianship." *The American Journal of Comparative Law*. <https://doi.org/10.2307/839493>.
12. Marsh, James R. 2005. "Recent Judicial Decisions Regarding the Adoption and Safe Families Act." *Adoption Quarterly*. [https://doi.org/10.1300/j145v08n04\\_04](https://doi.org/10.1300/j145v08n04_04).
13. Mathur, Ashutosh Dayal. 2007. "Property, Family, and Women." *Medieval Hindu Law*. <https://doi.org/10.1093/acprof:oso/9780195685589.003.0003>.

14. Purwar, Neeti, Hari Shankar, and Kalpana Kumari. 2018. "Family Planning Adoption and Unmet Needs: Spousal Agreement in Rural Varanasi." *Indian Journal of Community Medicine: Official Publication of Indian Association of Preventive & Social Medicine* 43 (4): 284–87.
15. Rattigan, Sir William Henry. 1873. *The Hindu Law of Adoption*.
16. Rose, H. A. 1922. "87. Legitimation and Adoption in Hindu Law." *Man*. <https://doi.org/10.2307/2839605>.
17. Ross, Catherine J. 2006. "Foster Children Awaiting Adoption Under the Adoption and Safe Families Act of 1997." *Adoption Quarterly*. [https://doi.org/10.1300/j145v09n02\\_07](https://doi.org/10.1300/j145v09n02_07).
18. Simmons, Caleb. 2018. "Women, Ritual, Agency, and Recovery." *International Journal of Hindu Studies*. <https://doi.org/10.1007/s11407-018-9235-3>.
19. Stephenson, Rob. 2006. "District-Level Religious Composition and Adoption of Sterilization in India." *Journal of Health, Population, and Nutrition* 24 (1): 100–106.
20. Thapar, Savitri, and Margaret Cormack. 1964. "The Hindu Woman." *Population Studies*. <https://doi.org/10.2307/2172636>.