

ADOPTION IN HINDUS

ADOPTION in the Hindus is covered by The Hindu Adoptions Act and after the coming of this Act all adoptions can be made in accordance with this Act. It came into effect from 21st December, 1956.

Prior to this Act motto of adoption is only religious.

It applies to Hindus, Buddhists, Jainas and Sikhs and to any other person who is not a Muslim, Christian, Parsi or Jew by religion

REQUIREMENTS FOR A VALID ADOPTION

No adoption can take place unless:

THE PERSON ADOPTING HAS THE CAPACITY / RIGHT TO TAKE CHILD IN ADOPTION (s.6)

CAPACITY OF MALE

Any male Hindu, who is of sound mind and is not a minor, has the capacity to take a son or daughter in adoption. Provided that if he has a wife living, he shall not adopt except with the consent of his wife, unless his 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.

CAPACITY OF FEMALE

Any female Hindu

- a. who is of sound mind
- b. who is not a minor, and
- c. who is not married, or if married, whose marriage has been dissolved or whose husband is dead or 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,

has the capacity to take a son or daughter in adoption.

Where the woman is married it is the husband who has the right to take in adoption with the consent of the wife.

THE PERSON GIVING A CHILD IN ADOPTION HAS THE CAPACITY/RIGHT TO DO SO: (s.9)

- a. No person except the father or mother or guardian of the child shall have the capacity to give the child in adoption.
- b. The father alone if he is alive shall have the right to give in adoption, but such right shall not be exercised except with the consent of the mother unless the mother 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.
- c. The mother may give the child in adoption if the father is dead or has co

mpletely 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.

d. Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is unknown (s.11{4}) - the guardian of the child may give the child in adoption with the previous permission of the court. The court while granting permission shall be satisfied that the adoption is for the welfare of the child and due consideration will be given to the wishes of the child having regard for the age and understanding of the child .

The court shall be satisfied that no payment or reward in consideration of the adoption except as the court may sanction has been given or taken.

THE PERSON CAN BE ADOPTED (s.10)

No person can be adopted unless

- a. he or she is a Hindu;
- b. he or she has not already been adopted;
- c. 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;
- d. 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 A VALID ADOPTION ARE FULFILLED

- a. if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son living at the time of adoption
- b. if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter living at the time of adoption;
- c. if the adoption is by a male and the person to be adopted is a male, the adoptive father is at least twenty one years older than the person to be adopted ;
- d. if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty one years older than the person to be adopted;
- e. the same child may not be adopted simultaneously by two or more parents ;
- f. the child to be adopted must be actually given and taken in adoption with an intent to transfer the child from the family of birth.

EFFECT OF ADOPTION

1. An adopted child shall be deemed to be the child of his or her adoptive father

ther or mother for all purposes with effect from the date of adoption.

However any property which vested in the adopted child shall continue to vest in such person subject to the obligations if any attached to the ownership of such property including the obligation to maintain relatives in the family of his or her birth.

2. Similarly the adopted child shall not divest a person of any estate which vested in him or her before adoption.

3. Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or will.

The personal laws of Muslims, Christian, Parsis and Jews in India do not contain any provision of adoption. However these persons can adopt the children from orphanage by obtaining permission from the court under the Guardians and Wards Act .