



Study Notes

The Hindu Adoptions and Maintenance Act, 1956

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The Hindu Adoptions and Maintenance Act 1956

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Extent and Application of the Act

- This Act extends to the whole of India (Section 1)
- This Act **applies to**
 - ✓ Any person who is a Hindu by religion including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj.
 - ✓ any person who is a Buddhist, Jain or Sikh by religion
 - ✓ any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion
- The following persons are Hindus, Buddhists, Jains, or Sikhs by religion
 - ✓ any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion
 - ✓ any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged
 - ✓ any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh
 - ✓ any person who is convert or re-convert to the Hindu, Buddhist, Jain or Sikh religion
- This Act **shall not apply to**
 - ✓ the members of any scheduled Tribe within the meaning of article 366 of the Constitution

Important Definitions (Section 3)

- **Custom and Usage** - any rule which, having been continuously and uniformly observed for a long time, **has obtained the force of law** among Hindus in any local area, tribe, community, group or family
 - ✓ the rule should be certain and not unreasonable or opposed to public policy
 - ✓ in the case of a rule applicable only to a family, it has not been discontinued by the family
- **Maintenance**- includes
 - ✓ in all cases, provision for food, clothing, residence, education and medical attendance and treatment
 - ✓ in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage
- **Minor** means a person who has not completed his or her age of eighteen years

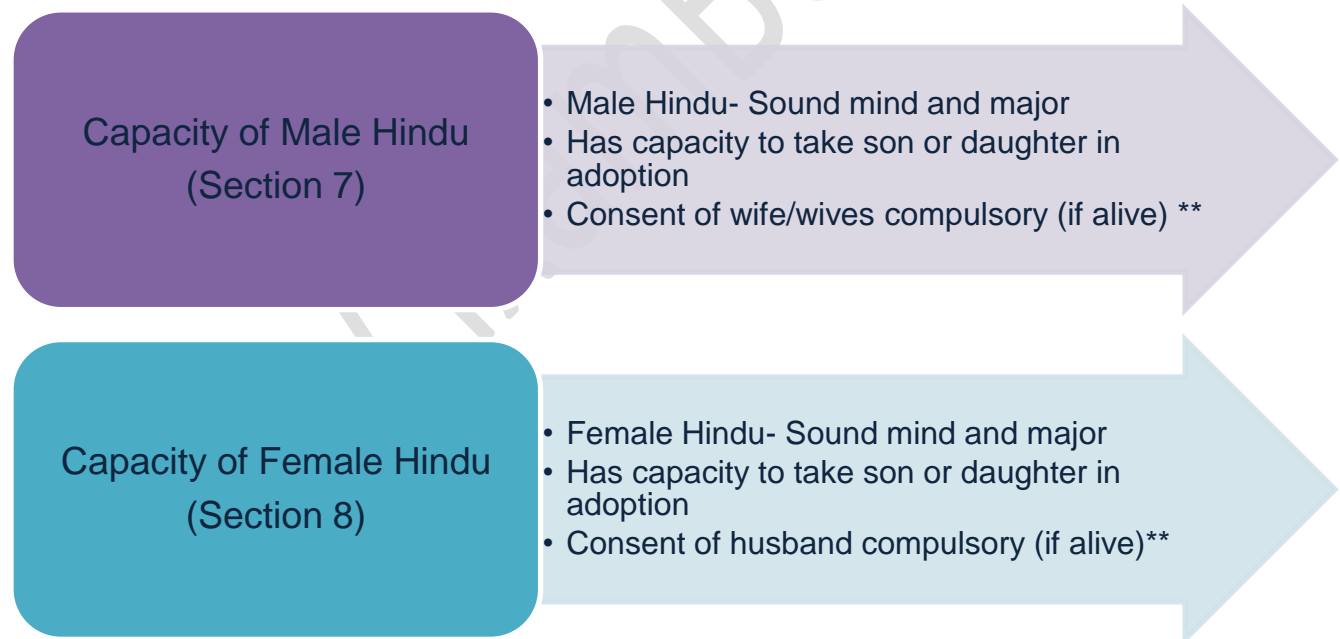
Adoption

- No adoption shall be made by or to a Hindu except in accordance with the provisions of this Act
- Any adoption made in contravention of the said provisions shall be void
- An adoption which is void shall
 - ✓ Not create any rights in adoptive family in favour of any person who could have been adopted and acquired these rights
 - ✓ Not destroy the rights of any person in the family of his/her birth (Section 5)

Section 6 - Requisites of a valid adoption

- The person adopting has the capacity, and also the right, to take in adoption;
- The person giving in adoption has the capacity to do so;
- The person adopted is capable of being taken in adoption; and
- The adoption is made in compliance with the other conditions mentioned in this Chapter

Section 7 & 8 – Capacity to take in adoption



** **Consent is subject to** the fact that wife/husband has not

- ✓ completely and finally renounced the world,
- ✓ ceased to be a Hindu
- ✓ been declared by a court of competent jurisdiction to be of unsound mind

Section 9 – Persons capable of giving in adoption

- **Father, mother or guardian** of a child shall have capacity to give child in adoption
- The father or the mother shall have equal right to give a son or daughter in adoption, **save with each other consent****
- 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 not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person **including the guardian** himself
- The **court shall take into consideration**
 - ✓ Welfare of the child
 - ✓ Wishes of the child having regard to age and understanding of the child
 - ✓ That there should not be any payment or reward in consideration of adoption except as the court may sanction
- Father and mother do not include adoptive father and adoptive mother
- Guardian means a person having the care of the person of a child or of both his person and property and includes—
 - ✓ a guardian appointed by the will of the child's father or mother, and
 - ✓ a guardian appointed or declared by a court;
- "court" means the **city civil court or a district court** within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

Section 10 – Persons who may be adopted

- No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:
 - ✓ he or she is a Hindu;
 - ✓ he or she has not already been adopted;
 - ✓ 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;
 - ✓ 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

Section 11 – Other Conditions of a valid adoption

- If **the adoption is of a son**, the adoptive father or mother by whom the adoption is made must not have a Hindu son or son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- 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 (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- If the **adoption is by a male and the person to be adopted is a female**, the adoptive father is at least **twenty-one** years older than the person to be adopted;

- 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;
- The same child may not be adopted simultaneously by two or more persons;
- The child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption

Section 12 – Effects of adoption

- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption
- And from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

Provided that—

- The child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
- Any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;
- The adopted child shall not divest any person of any estate which vested in him or her before the adoption.
- 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 by will (Section 13)
- No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth (Section 15)

Section 13 – Determination of adoptive mother in certain cases

- 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, the senior most in marriage among them shall be deemed to be the adoptive mother and the others to be step-mothers.
- Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the step-mother of the adopted child.
- Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child

Section 16 – Presumption as to registered documents relating to adoption

- Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption,
- the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved

Section 17 – Prohibition of certain payments

- No person **shall receive or agree to receive any payment** or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.
- If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may **extend to six months, or with fine, or with both.**
- No prosecution under this section shall be instituted without the **previous sanction of the State Government** or an officer authorised by the State Government in this behalf.

Maintenance

Maintenance of Wife

- Section 18
- Entitled to maintenance by her husband during her lifetime
- Entitled to live separately from her husband without forfeiting her claim to maintenance if conditions mentioned below are fulfilled ***
- Not entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a hindu by conversion to another religion

Maintenance of Widowed Daughter in Law

- Section 19
- Hindu wife entitled to maintenance after the death of her husband by her father-in-law.
- Provided-** she is not able to maintain herself out of her earnings or other property, or where she has no property of her own - from estate of her husband/father/mother/her son/daughter or their estate
- Such obligation shall cease on remarriage

- ***Hindu Wife is entitled to live separately from her husband without forfeiting her claim to maintenance if conditions mentioned below are fulfilled
 - ✓ if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;
 - ✓ if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
 - ✓ if he has any other wife living;
 - ✓ if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
 - ✓ if he has ceased to be a Hindu by conversion to another religion;
 - ✓ if there is any other cause justifying her living separately.

Maintenance of children and aged parents

- Section 20
- Hindu is bound during his/her lifetime to maintain his/her children or aged/infirm parents
- Legitimate/Illegitimate child may claim maintenance from his/her father/mother so long as child is minor
- Obligation of aged/infirm parents or unmarried daughter is so far as they are unable to maintain out of their own earnings

Maintenance of dependants

- Section 22
- Heirs of a deceased Hindu are bound to maintain the dependants of deceased out of estate inherited by them
- Dependant shall be entitled to maintenance from those who take the estate by testamentary or intestate succession
- Liability of each of the persons who take the estate shall be in proportion to the value of share or part of estate taken by him/her
- Dependant shall not be liable to contribute to maintain others if liability of share becomes less than what would be awarded to him by maintenance.

Section 22 – Dependants Defined

- Dependants means the following relatives of the deceased
 - ✓ his or her father;
 - ✓ his or her mother;
 - ✓ his widow, so long as she does not re-marry;

- ✓ his or her son or the son of his predeceased son or the son of a predeceased son of his pre-deceased son, so long as he is a minor: provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great-grandson, from the estate of his father or mother or father's father or father's mother;
- ✓ his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried provided and to the extent that she is unable to obtain maintenance, in the case of a granddaughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;
- ✓ his widowed daughter: provided and to the extent that she is unable to obtain maintenance—
 - from the estate of her husband; or
 - from her son or daughter if any, or his or her estate; or
 - from her father-in-law or his father or the estate of either of them;
- ✓ any widow of his son or of a son of his predeceased son, so long as she does not re-marry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;
- ✓ his or her minor illegitimate son, so long as he remains a minor;
- ✓ his or her illegitimate daughter, so long as she remains unmarried

Amount of Maintenance

- It shall be in the **discretion of the court** to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act
- In determining the amount of maintenance, if any, to be awarded to **a wife, children or aged on infirm parents** under this Act, regard shall be had to—
 - (a) the position and status of the parties;
 - (b) the reasonable wants of the claimant;
 - (c) if the claimant is living separately, whether the claimant is justified in doing so;
 - (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;
 - (e) the number of persons entitled to maintenance under this Act.
- In determining the amount of maintenance, if any, to be awarded to a **dependent** under this Act, regard shall be had to—
 - (a) the net value of the estate of the deceased after providing for the payment of his debts;
 - (b) the provision, if any, made under a will of the deceased in respect of the dependant;
 - (c) the degree of relationship between the two;
 - (d) the reasonable wants of the dependant;
 - (e) the past relations between the dependant and the deceased;

- (f) the value of the property of the dependant and any income derived from such property; or from his or her earnings or from any other source;
- (g) the number of dependants entitled to maintenance under this Act.

Other Provisions

- Any person claiming maintenance under this Act should be a Hindu (Section 24)
- The amount of maintenance, whether fixed by a decree of court or by agreement, may be altered subsequently if there is a material change in the circumstances justifying such alteration (Section 25)
- Debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Act (Section 26)
- A dependant's claim for maintenance under this Act **shall not be a charge** on the estate of the deceased or any portion thereof, **unless** one has been created
 - ✓ by the will of the deceased,
 - ✓ by a decree of court,
 - ✓ by agreement between the dependant and the owner of the estate or portion, or otherwise (Section 27)
- Where a dependant has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee
 - ✓ If the transferee has notice of the right, or
 - ✓ If the transfer is gratuitous;
 - ✓ but not against the transferee for consideration and without notice of the right (Section 28)