



KNOW THE LAW

Relating to Adoption

In simple terminology, the term 'adoption' means acceptance of a child of other parents to be the same as one's own child or the choosing and making that to be one's own which originally was not so. In legal terminology, adoption enables a childless person to make somebody else's child as his own.

Adoption under Hindu Law:

The main purpose of Adoption is to provide consolation and relief to a childless person, and on the other hand, rescue the helpless, the unwanted, the destitute or the orphan child by providing it with parents.

Currently, the adoption under Hindu Law is governed by The Hindu Adoption and Maintenance Act, 1956.

Requirements for a valid adoption

No adoption is valid unless :

- The person adopting is lawfully capable of taking in adoption.
- The person giving in adoption is lawfully capable of giving in adoption.
- The person adopted is lawfully capable of being taken in adoption.
- The adoption is completed by an actual giving and taking.

Who May Adopt?

Capacity of male :

- a. Any male Hindu,
 - b. who is of sound mind and
 - c. 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.

Capacity of female

- a. Any female Hindu.
- b. who is of sound mind
- c. who is not a minor, and
- d. 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.

Who may give in adoption

- a. No person except the father or mother or guardian of the child has the capacity to give the child in adoption.
- b. The father alone, if he is alive, has the right to give in adoption, with consent of wife.
- c. The mother may give the child in adoption if the father 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.
- d. Where both the father and mother are dead or have completely and finally renounced the world 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.

Who can be adopted

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,
- d. he or she has not completed the age of fifteen years.

Other conditions for a valid adoption

- 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; 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.

Personal law of Muslims, Christians, Parsis and Jews does not recognise complete adoption. As non-Hindus do not have an enabling law to adopt a child legally, those desirous of adopting a child can only take the child in 'guardianship' under the provisions of The Guardian and Wards Act, 1890. This however does not provide to the child the same status as a child born biologically to the family.

Adoption under Muslim law:

Adoption is the transplantation of a son from the family in which he is born, into another family by gift made by his natural parents to his adopting parents. Islam does not recognise adoption. In Mohammed Allahabad Khan v. Mohammad Ismail it was held that there is nothing in the Mohammedan Law similar to adoption as recognized in the Hindu System. Acknowledgement of paternity under Muslim Law is the nearest approach to adoption. The material difference between the two can be stated that in adoption, the adoptee is the known son of another person, while one of the essentials of acknowledgement is that the acknowledgee must not be known son of another. However an adoption can take place from an orphanage by obtaining permission from the court under Guardians and wards act.

Adoption under Parsis and Christian laws:

The personal laws of these communities also do not recognize adoption and here too an adoption can take place from an orphanage by obtaining permission from the court under Guardians and wards act.

LAWS GOVERNING ADOPTION

- In India, Hindus, Jains, Sikhs or Buddhist are allowed to formally adopt a child. This adoption comes under Hindu Adoption and Maintenance Act, 1956.
- There are other laws such as Guardianship and Wards Act, 1890, Juvenile Justice Act, 2015 etc. to provide the provisions of adoption not only for Hindus but also for all non – Hindus such as Christians, Muslim, Parsis and Jews.
- Under the Guardianship and Wards Act, while the adoptive parents are conferred guardianship status, the adopted child does not automatically get inheritance right. The guardians need to submit an investment plan and also a certain amount of money in the name of the child for his/her future.
- According to the **Juvenile Justice Act**, the Act is applicable only to children who are in need of care and protection and come under the purview of adoption under the Act and not to those children who have been voluntarily put for adoption.

Important facts about domestic adoption procedure in India:

- Prospective parents must register at a licensed adoption placement agency with the entire required document.
- Then the worker from the agency will approach the parents for a home study.
- After finding out a suitable child, the agency will call the prospective parents to meet the child.
- If the parents approve, the agency may hand over the child once a foster care agreement is signed.
- Meanwhile, the agency's lawyer files a petition for adoption on behalf of the couple, either before the court or Juvenile Justice Board, depending on the law under which the adoption will take place.
- The agency representative and the parents register the adoption deed as a proof of completion of adoption.

Section 11(vi) of the Hindu Adoption and Maintenance Act lays down, "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 child whose parentage is not known, from the place of family where it has been brought up to the family for its adoption”

ADOPTION FOR THOSE WHO ALREADY HAVE A CHILD

The provisions of our legal statutes portrays that a person can adopt a child even if he/she has a child already, upon one condition that the child adopted must be of the opposite gender to the one already they have (Hindu Adoption and Maintenance Act). But in other two adoption laws, there are no such conditions that a person must satisfy while adopting. But these laws also state that the original child of the person, who is adopting, if old enough, must express his/her views regarding the adoption, in writing.

RIGHTS OF THE ADOPTED CHILD

Section 12 of the Hindu Adoption and Maintenance Act states that “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 adoption and from such date all the ties of the child in the family by his or her birth shall be deemed to be saved and replaced by those created by the adoption in the adoptive family”.

- Neither the adoptive parents nor the child can overturn a valid adoption .

Guidelines Governing Adoption of Children, 2015

In pursuance of the powers conferred by sub-section (3) of section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) and in supersession of the Guidelines Governing the Adoption of Children, 2011, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following Guidelines issued by the Central Adoption Resource Authority to provide for the regulation of adoption of orphan, abandoned or surrendered children.

Child eligible for adoption. -

Any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee is eligible for adoption.

- (a) The prospective adoptive parents should be physically, mentally and emotionally stable; financially capable; motivated to adopt a child; and should not have any life threatening medical condition;
- (b) any prospective adoptive parent, irrespective of his marital status and whether or not he has his own biological son or daughter, can adopt a child;
- (c) single female is eligible to adopt a child of any gender:

- (d) single male person shall not be eligible to adopt a girl child;
- (e) in case of a couple, the consent of both spouses shall be required;
- (f) no child shall be given in adoption to a couple unless they have at least two years of stable marital relationship;
- (g) the age of prospective adoptive parents as on the date of registration shall be counted for deciding the eligibility and the eligibility of prospective adoptive parents to apply for children of different age groups shall be as under -

Age of the child	Maximum composite age of prospective adoptive parents	Maximum age of single prospective adoptive parent
Upto 4 years	90 years	45 years
Above 4 upto 8 years	100 years	50 years
Above 8 upto 18 years	110 years	55 years;

- (h) the minimum age difference between the child and either of the prospective adoptive parents should not be less than twenty five years;
- (i) the age for eligibility will be as on the date of registration of the prospective adoptive parents;
- (j) couples with more than four children shall not be considered for adoption;

Availability of child for adoption. -

- (1) As soon as a child is declared legally free for adoption by the Child Welfare Committee, such child may be allowed to be given in adoption to a resident Indian or non-resident Indian parents:

Provided that such child shall be allowed to be given in inter-country adoption —

- (a) after sixty days, if the child is below five years of age;
- (b) after thirty days, if the child is above five years of age or is a sibling;
- (c) after fifteen days, if the child has any mental or physical disability.

Legal Procedure. -

- (1) The specialised adoption agency shall file the adoption petition in the court, having jurisdiction over the place where the specialised adoption agency is located, within seven days from the date of acceptance by prospective adoptive parents for obtaining the necessary adoption orders under the Act.
- (2) In case the child is from a children's home which is located in another district, the specialised adoption agency shall file the adoption petition in the concerned court of that district.

- (3) The adoption petition shall contain all requisite documents as per Schedule- 8.
- (4) The court will hold the adoption proceeding in-camera and dispose of the case within a period of two months from the date of filing of the adoption petition by the specialised adoption agency.
- (5) The specialised adoption agency shall obtain a certified copy of the adoption order from the court and will forward it to the prospective adoptive parents within ten days and it shall also post a copy of such order in the Child Adoption Resource Information and Guidance System and make necessary entries in Child Adoption Resource Information and Guidance System.
- (6) Registration of an adoption deed shall not be necessary.
- (7) The specialised adoption agency shall obtain the birth certificate of the child from the birth certificate issuing authority within ten days from the date of issuance of adoption order, with the name of adoptive parents, as parents, and date of birth as recorded in the adoption order.

Important definitions

- “abandoned” means an unaccompanied and deserted child who is declared abandoned by the Child Welfare Committee after due inquiry;
- “authorised foreign adoption agency” means a foreign social or child welfare agency that is authorised by Central Adoption Resource Authority on the recommendation of the concerned Central Authority or Government Department of that country for coordinating all matters relating to adoption of an Indian child by a citizen of that country;
- “Child Adoption Resource Information and Guidance System” means an e-governance system for facilitating and monitoring the adoption programme;
- “child legally free for adoption” means an orphan, abandoned and surrendered child declared free for adoption by the Child Welfare Committee;
- “Home Study Report” means a report containing details of the adoptive parents, which include social and economic status; family background; description of home; standard of living; compatibility between spouses, and other family members; health status;
- “in-country adoption” means adoption of a child by a citizen of India;
- “inter-country adoption” means adoption of a child by a overseas citizen of India or a foreign national;
- “Specialised Adoption Agency” means the agency recognised by the State Government under sub-section 4 of section 41 of the Act for the purpose of placing children in adoption;
- “State Adoption Resource Agency” means the agency setup by the State Government under the Integrated Child Protection Scheme;
- “surrendered child” means a child, who in the opinion of the Child Welfare Committee, is

relinquished on account of physical, emotional and social factors beyond the control of the parent or legal guardian;

New online registration system

- A new online registration system is now in place called the Child Adoption Resource Information and Guidance System (CARINGS), which is managed by the nodal body dealing with adoption, the Central Adoption Resources Agency (CARA). As per the new guidelines framed by the CARA, parents desiring to adopt must register with the online system by uploading a list of documents.
- Next, a home study report is prepared within a month by a social worker based in the state where the prospective parents reside. The report is vetted by one of the specialised adoption agencies — either declaring the parents eligible to adopt or rejecting their application with reasons.
- If declared eligible, the prospective parents are placed on a waiting list (called seniority list) and when their turn comes, they are shown the photographs of six children, along with background information and medical history. The parents must “reserve” one among the six options within 48 hours, which means they let go of the remaining five, who are then showed to the next prospective parent in line.
- The specialised adoption agency from the state where the child is then meets the prospective parents to assess their suitability for the child. The prospective parents also meet the child. This entire process of “matching” is to be completed within 15 days.
- If the parents decide to adopt the child that they reserved, then the agency proceeds with the legal work. If they do not, they are placed at the bottom of the waiting list and wait for their chance to come up again.



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