

SEMESTER-II

LM-114-GENERAL PRINCIPLES OF HINDU LAW AND HINDU LAW RELATING TO STATUS CREDIT-4

TOPIC-6: ADOPTIONS

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INTRODUCTION

- Adoptions under Hindu law are governed by Chapter-II of the *The Hindu Adoptions and Maintenance Act, 1956* (hereinafter HAMA).
- Purpose of Hindu adoption is two-fold:
 - a. To secure performance of one's funeral rites
 - b. To preserve the continuance of one's lineage¹

¹ Dr. Paras Diwan, *Modern Hindu Law*, 233 (Allahabad Law Agency, Delhi, Twentieth Edition, reprint 2011)

- **Doctrine of relation back:** if any child is adopted after the death of father, it shall be presumed that he was adopted on the day when the father died, so as the chain of lineage continues.
- Motive for adoption is not relevant for considering whether it was valid or not. *Devgonda Raygonda Patil vs Shamgonda Raygonda Patil* AIR 1992 Bom 189
- HAMA made adoption a pure secular activity so much so that even any ceremony is not required.²
- Section 5 provides for Adoptions to be regulated by this Chapter-II. It says, ‘no adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void’.
- The section further provides that an adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

VALID ADOPTION NOT TO BE CANCELLED (SECTION 15):

- Hindu Adoption and Maintenance Act 1956 provides that 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. Therefore once a legally valid adoption is made it cannot be revoked.

PROHIBITION OF CERTAIN PAYMENTS (SECTION17):

² *Supra Note 1*

- HAMA provides that 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 Section 17 of HAMA.
- If any person receives or agree to receive any payment or other reward in consideration of the adoption of any person, and if any person make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited, he shall be punishable with imprisonment which may extend to **six months, or with fine, or with both.**
- No prosecution under Section 17 of HAMA shall be instituted without the **previous sanction of the State Government** or an officer authorised by the State Government in this behalf.
- Ante-adoption agreement does not amount to payment of reward or consideration. *Jupudi Venkata Vijaya Bhaskar vs Jupudi Kesava Rao (D) And Ors AIR 2003 SC 3314*³

REQUISITES OF A VALID ADOPTION (SECTION 6)

- No adoption shall be valid unless—
 1. the person adopting has the capacity, and also the right, to take in adoption;
 2. the person giving in adoption has the capacity to do so;
 3. the person adopted is capable of being taken in adoption; and
 4. the adoption is made in compliance with the other conditions mentioned in this Chapter.

³ *Supra Note 1*

WHO MAY TAKE IN ADOPTION

- Section 7 provides the conditions of a male hindu to adopt and Section 8 provides the conditions of a female hindu to adopt.
- Section 7 declares that any male Hindu has the capacity to take son or a daughter in adoption only if:
 1. He is of sound mind
 2. He is not a minor
 3. Consent of wife (if he has a living wife), unless the wife has
 - a. completely and finally **renounced the word** or
 - b. has **ceased to be a Hindu** or
 - c. has been declared by a court of competent jurisdiction to be of **unsound mind**.
 - Explanation.—If a person has more than one wife living (in pre Hindu Marriage Act scenario) at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.
- Any male hindu (major and sound) may adopt whether he is bachelor, widower, divorcee or married.⁴
- In case he is married consent of wife is essential, absence of which will make adoption **void** by virtue of Section 5(1).⁵
- Section 8 provides that any **female Hindu** has the capacity to take son or a daughter in adoption only if:

⁴ *Supra Note 1*

⁵ *Ibid*

1. She is of sound mind
 2. She is not a minor
 3. Consent of Husband (if he has a living Husband), unless the husband has
 - a. completely and finally **renounced the word** or
 - b. has **ceased to be a Hindu** or
 - c. has been declared by a court of competent jurisdiction to be of **unsound mind**.
- A married woman cannot adopt even with consent of her husband .*Smt. Malati Roy Chowdhury vs Sudhindranath* AIR 2007 Cal 4.⁶
 - Guardian of a child may take him in adoption with the permission of the Court. [Section9(4)]
 - Widow need not to take consent of co-widow for adoption. *Smt. Vijayalakshamma & Anr vs B. T. Shankar* AIR2001 SC 1424⁷
 - Minority of wife at the time of adoption is irrelevant. *Nagireddy Lakshmi And Ors. vs Nagireddy Nagaraju And Ors.* AIR 2005 AP 17⁸

WHO MAY GIVE IN ADOPTION (SECTION 9)

- No person except **the father or mother or the guardian** of a child shall have the capacity to give the child in adoption.
- **‘guardian’** means a person having the care of the person of a child or of both his person and property and includes (a) a guardian appointed by the will of the child's father or mother, and (b) a guardian appointed or declared by a court;

⁶ *Supra Note 1*

⁷ *Ibid*

⁸ *Ibid*

- The father or the mother, if alive, shall have **equal right to give** a son or daughter in adoption:
- Provided that such right shall not be exercised by either of them **save with the consent of the other** unless one of them
 1. has completely and finally renounced the world or
 2. has ceased to be a Hindu or
 3. has been declared by a court of competent jurisdiction to be of unsound mind.
- Where both the father and mother are
 1. dead or
 2. have completely and finally **renounced the world** or
 3. have **abandoned** the child or
 4. have been declared by a court of competent jurisdiction to be of **unsound mind** or
 5. 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**. Here 'court' means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

- Before granting permission to a guardian, the court shall be satisfied that:
 1. the adoption will be for the **welfare of the child**,
 2. due consideration being for this purpose given to the **wishes of the child** having regard to the age and understanding of the child and
 3. that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant **any payment or reward** in

consideration of the adoption except such as the court may sanction

- Adoptive father and an adoptive mother can not give a child in adoption. A child once adopted can not be adopted again by anybody.

PERSONS WHO MAY BE ADOPTED (SECTION10)

- A person can be adopted if:—
 - (i) he or she is a **Hindu**;
 - (ii) he or she has **not already been adopted**;
 - (iii) 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;
 - (iv) 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.
- Under Hindu Adoption and Maintenance Act, 1956, Section 6 thereof permits adoption by a Hindu of a Hindu child alone. Law does not recognize an adoption by a Hindu of any person other than a Hindu. *Kumar Sursen vs State Of Bihar And Ors.* AIR 2008 Pat 24.
- Adoption of a lunatic and illegitimate child is valid under HAMA.⁹

OTHER CONDITIONS FOR A VALID ADOPTION (SECTION11):

- In every adoption, the following conditions must be complied with:—

⁹ *Supra Note 1*

(i) 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** (whether by legitimate blood relationship or by adoption) **living** at the time of adoption;

(ii) 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;

(iii) 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;

(iv) 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;

(v) the same child may **not be adopted simultaneously by two or more persons**;

(vi) 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: Provided that the performance of datta homam shall not be essential to the validity of an adoption.

- While upholding the provisions as personal laws do not fall within the ambit of part III of the Constitution, Bombay High Court ruled that parliament can re-examine the question to relax these conditions. *Sandhya Alias Supriya Kulkarni vs The Union Of India & Anr* AIR 1998 Bom 228¹⁰

EFFECTS OF ADOPTION (SECTION 12):

- 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
- from the date of the adoption 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. But:
 - (a) the child cannot **marry any person** (from his biological family) whom he or she could not have married if he or she had continued in the family of his or her birth;
 - (b) **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;
 - (c) the adopted child shall not **divest** any person of any estate which vested in him or her before the adoption.
- *Smt. Prafulla Bala Mukherjee vs Satish Chandra Mukherjee* AIR 1998 Cal 86 adoption was not proved. The claimed adopted child considered the biological family as his family.

¹⁰ *Supra Note 1*

- *Sawan Ram & Others vs Kala Wanti* 1967 AIR 1761 decision enabled the adopted son to inherit the property of deceased father through relation back doctrine.

RIGHT OF ADOPTIVE PARENTS TO DISPOSE OF THEIR PROPERTIES (SECTION 13)

- 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 by will.

DETERMINATION OF ADOPTIVE MOTHER IN CERTAIN CASES (SECTION 14)

- 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 seniormost 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.

PRESUMPTION AS TO REGISTERED DOCUMENTS RELATING TO ADOPTION (SECTION 16)

- 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.