

All about the Hindu Adoptions and Maintenance Act, 1956

By Akanksha Yadav

Q1. To whom this Act is applicable?

This act applies on any person who is

- i. a Hindu (including Virashaiva, Lingyat, or follower of Brahmo, Prarthana or Arya Samaj), Buddhist, Jaina or Sikh by religion, or;
- ii. any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that he/she wouldn't have been governed by any Hindu law, customs or usage as part of law in the absence of this Act.
- iii. not a Scheduled Tribe member under Article 366 (25) of the Constitution.
- iv. not a renoncants of the Union Territory of Pondicherry.

Q2. Who can be considered a Hindu, Buddhist, Jaina or Sikh by religion?

- i. Any legitimate or illegitimate child whose both parents are Hindus, Buddhists, Jainas or Sikhs by religion.
- ii. Any legitimate or illegitimate child whose one of the parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which his/ her such parent belongs or belonged.
- iii. Any legitimate or illegitimate child whose both parents has abandoned him or whose parentage is unknown, and he/she is brought up as a Hindu, Buddhist, Jaina or Sikh.
- iv. Any person who converted or reconverted to the Hindu, Buddhist, Jaina or Sikh religion.

Q3. What are the conditions required to be fulfilled for a valid adoption?

- i. The person adopting has capacity and right to adopt a child
 - In case of a male Hindu, he should be of sound mind and major (above 18) can adopt a son or a daughter. The consent of wife (if more than one wife living, each one's consent) is necessary, if living, unless- she has completely and finally renounced the world, ceased to be a Hindu or a court of competent jurisdiction has declared her unsound.
 - In case of a female Hindu to adopt a son or daughter, she should be of sound mind, major and either unmarried, or widow, or whose marriage has been dissolved, or whose husband has finally renounced the world or ceased to be a Hindu, or a court of competent jurisdiction has declared husband unsound.

- ii. The person giving in adoption has right to do so
 - The father or mother or guardian of child can only give child for the adoption
 - If father is alive, he alone has right to give child for adoption with the consent of mother unless she has completely and finally renounced the world, ceased to be a Hindu or a court of competent jurisdiction has declared her unsound.
 - Mother can give child for adoption if father of child is dead or has completely and finally renounced the world or ceased to be a Hindu, or a court of competent jurisdiction has declared him unsound.
 - The guardian of a child who is appointed either by will of child's father or mother or by court can give child for adoption. He/she can only give child for adoption with the prior permission of the court if both parents of the child are dead or have completely and finally renounced the world or have abandoned child or a court of competent jurisdiction has declared them unsound.
 - Adoptive father or mother can't give child for the adoption
- iii. The child has capacity to be adopted
 - He/she is Hindu and has not been adopted earlier
 - He/she is not married unless a custom or usage applicable to parties which allows to adopt a married child
 - He/she is below fifteen years unless a custom or usage applicable to parties which allows to adopt a child of fifteen years or above
- iv. If child to be adopted is a son, then father or mother who's going to adopt shall not have an alive Hindu son, son's son or son's son's son at the time of adoption.
- v. If child to be adopted is a daughter, then father or mother who's going to adopt shall not have an alive Hindu daughter or son's daughter at the time of adoption.
- vi. A male adopting a daughter or a female adopting a son shall have at least an age gap of 21 years with the child to be adopted.
- vii. Two or more persons cannot adopt the same child.
- viii. The adopted child should be given with intent to transfer to family of its adoption.

Q4. What are the rights and obligations of a child after adoption?

- From the date of the adoption, adopted child shall be considered the child of his/her adoptive parents for all the purposes and all the ties from the birth family will be replaced by that of adoptive family.
- Adopted child can't marry a person whom he/she could not marry had adoptive child continued living in birth family.
- If adopted child was vested with any property before the adoption, it will continue to be vested under adopted child with subject to obligations attached to the ownership of such property.
- If any person to whom any estate was vested before the adoption, the adopted child can't divest that estate from that person.

Q5. Can adoptive parents dispose their property after adoption?

Yes, even after adoption, adopted parents have right to dispose his/her property by transfer inter vivos or by will.

Q6. Who are adoptive mother and father?

- If a Hindu male adopts a child, he will be adoptive father and his living wife will be adoptive mother. In case, he has more than one wife, then senior most in marriage amongst them will be adoptive mother and others will be stepmothers.
- If a widower or bachelor adopts a child, he will be adoptive father, and any girl whom he marries after adoption will be stepmother of the adopted child.
- If a widow or unmarried female adopts a child, she will be adoptive mother, and any boy whom he marries after adoption will be stepfather of the adopted child.

Q7. Could a valid adoption be cancelled?

After a valid adoption is done, it can't be cancelled by either adoptive father or adoptive mother or any other person including the adopted child. Adopted child can't return to his/her family of birth after the adoption.

Q8. Is there any punishment for adoption in consideration of money?

Under S. 17 of the Act, any person who agrees to give or take any payment or reward in the consideration of adoption can be given any term of imprisonment extendable to six

months or fine or both. Previous Sanction of State government or an officer who is authorized by the state government on its behalf, is required for the prosecution.

Q9. When can a Hindu wife get maintenance according to this Act?

- i. A Hindu wife is entitled to receive maintenance from her husband during her lifetime. She can be deprived of her right to separate residence and maintenance from her husband only if she is unchaste or changes her religion and ceases to be a Hindu.
- ii. A Hindu wife who is separately living from her husband can even get maintenance if anyone of the ground follows:
 - Husband abandons her without a reason and without her wish or wilfully neglects her
 - She has a reasonable apprehension of threat to life in her mind, due to husband's cruelty
 - Husband has a virulent form of leprosy
 - Husband has another wife living or he lives with a concubine (mistress)
 - Husband converts to another religion and ceases to be a Hindu
 - Any other just cause to live separately from husband

Q10. When do a widowed daughter-in-law entitled to maintenance from her father-in-law?

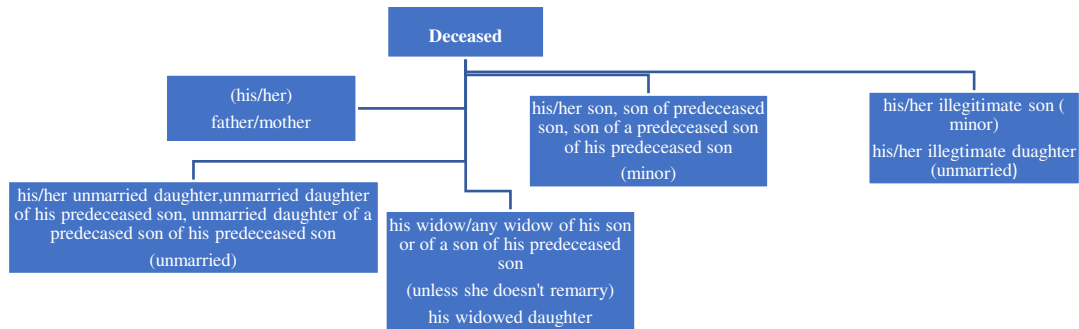
- She can't maintain herself out of her own earnings or property, or from the estate of: her husband or father or mother or son/daughter (if any).
- She has not remarried.
- If father-in-law has means to maintain her from any coparcenary property of which he is an owner and she has not been given her share.

Q11. What maintenance relief is provided to children and aged parents?

- A legitimate or illegitimate minor child can get maintenance from her father or mother.
- A Hindu is bound to maintain his/her unmarried daughter or aged or infirm parents, if unmarried daughter or aged or infirm parents (including a childless stepmother) can't maintain herself/ himself from her/his own earnings or other property.

Q12. Who are dependents under this Act?

The following relatives of the deceased who are unable to maintain themselves from the earnings or estate are dependents:



Q13. When can dependents get maintenance?

- The heirs of a deceased Hindu must maintain dependents out of the state they inherited from the deceased.
- If dependant (he/she) by testamentary or intestate succession was allotted a share in the estate by the state which he/she did not receive, he will get maintenance from those persons who take the estate and liability will depend upon each person according to their share or part in the taken estate.
- Dependant would not be liable to contribute to any other dependant, if contribution is more than the value of share/part he/she would receive from the maintenance given to him/her under this act.
- If deceased has any debt contract or payable debt, such debts will be prioritized over the maintenance of dependants.
- Dependant can't claim maintenance from the estate of deceased or any portion, unless a charge has been created by: the will of a deceased, decree of court or an agreement between the dependent and the owner of the estate or portion.
- If estate or any portion from which dependent should have received maintenance is transferred to a person(transferee) with a notice of right or gratuitously, dependent is entitled to have maintenance from transferee.

Dependant can't claim maintenance from transferee for consideration and without notice of right.

Q14. What will be the amount of maintenance under this Act?

- If any maintenance is to be given under this Act, it is discretion of court to determine the amount.
- In case of wife, children or aged or infirm parents, maintenance shall be according to: the position and status of parties, the reasonable wants of the claimant, whether claimant is justifiably living separate, the value or income from the claimant's property or earning or any other source of claimant and the number of persons to be awarded maintenance.
- In case of dependent, the maintenance shall be according to: the net value of the deceased after paying his due debts, the will of the deceased, the degree of relationship and past relations with the deceased, the reasonable wants of the dependent, the value or income from the dependent's property or earnings or any other course of income of dependent and the number of dependents to be given maintenance.
- The amount of maintenance can be changed if there is a justifiable material change in the circumstances.

Q15. Can a person be disentitled from the maintenance?

Yes, a person can't receive maintenance if he/she has ceased to be a Hindu by converting to another religion.