

ADOPTION AND GUARDIANSHIP UNDER HINDU MINORITY

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ABSTRACT

The research paper deals with adoption and guardianship under Hindu Law. Basically, under Adoption the research paper has been dealt with different legal provisions for adoption, and the valid requirements for adoption, and also what kind of effects adoption leads to both parents and the adopted child, to explain the main objectives for adoption and the laws which provide for the Hindus to adopt a child. Also, in short, the meaning of adoption under Hindu law has been provided in this research paper and how adoption is valid in India and how a child can be adopted only by Hindu parents because adoption is only provided under the Hindu Law. And under Guardianship, the paper deals with how a guardian is responsible, liable for minors because minors require a guardian as of course, they are not capable to make their own decision and also natural guardian which is the father after that mother which was established in the British era. The research paper also deals with the legal aspects of a guardian and also how guardians can be removed and also different case laws are there which deals with how the court has changed the guardian's role from father to mother. Also, different sections have been provided from different statutes which gives it a more clear idea about the research paper.

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Keywords: adoption, maintenance, guardian, minor, parents, father, mother, natural guardian.

INTRODUCTION

Adoption is a Hindu legal term. Only Hindus are permitted to adopt children; other groups are only permitted to serve as legal guardians. It's a fantastic chance to give a kid a family and a home. Adoption used to be frowned upon in typical Indian households. Adopting a child became legal under Hindu law later on. It governs the legal process which is related to Hindus adopting children, as well as other legal responsibilities such as child maintenance, wife maintenance, and in-law maintenance. The validity of adoption, legal adoption provisions, and adoption under Hindu law are all discussed in this article.

The Dharmashastras never addressed the issue of minors' guardianship. During the British era, the court established the law of guardianship. They determined that the father is the natural guardian of the minor child, and that if the father dies, the mother becomes the natural guardian of the minor child, and that no one else can be the natural guardian of the minor child. In Hindu law, testamentary guardians were also created. It was also accepted that the supreme guardianship of the minor children vested in the State as *parens patriae* and was exercised by the courts. The Hindu guardianship of minors has been codified under the Hindu Minority and Guardianship Act, 1956.¹

MEANING OF ADOPTION

Adoption is a procedure in which an individual assumes parental responsibility for another person, usually a child, from the biological or legal parent or parents of that person. All rights and obligations, as well as filiation, are permanently transferred from the biological parent or parents in a legal adoption.

It's a legal procedure in which a child is given to a married couple or a single woman who agrees to raise her as their child and take full responsibility for her. It is a globally recognized institution. Adoption is stated in almost all religions and mythologies in some way. In today's world, the idea of adoption has evolved from providing a child to the orphaned to providing a home to the homeless.

OBJECTIVES OF ADOPTION

¹ Dr. Paras Diwan and Peeyushi Diwan, Family Law, 295 (Allahabad Law Agency 2013)

- To ensure the protection of one's family property and the success of one's funeral rites.
- To ensure the continuation of one's ancestors.
- A widow's wish for someone to care for her in her later years.
- To provide comfort and relief to a parent who is childless.
- To rescue helpless, abandoned, destitute, or orphaned children and provide them with parents and a home.

Case – *Ramasubbayya v. Chanchu*²

Adoption was described in this case as a legal act that establishes strictly civil paternity and association ties between two people. Only Hindu married couples or unmarried adults may adopt a Hindu child, according to the Hindu Adoption and Maintenance Act of 1956.

LEGAL PROVISIONS OF ADOPTION

There are various provisions for a valid adoption under Hindu law:

The Hindu Adoption and Maintenance Act 1956:

In India, as part of the Hindu Code Bills, this act was passed in 1956. This act addressed the legal process of a Hindu adult adopting children, as well as a Hindu's legal responsibilities to provide maintenance to various family members, such as their wife, parents, and in-laws. This includes Hindus, Buddhists, Jains, and Sikhs, as well as anybody who does not identify as a Muslim, Christian, Parsi, or Jew.

Requirements for a valid adoption –

- No adoption is legitimate because both the person adopting and the person giving in adoption is legally capable of doing so.
- A ceremony known as data human (oblation to the fire) has been performed to complete the adoption. However, in some cases, this might not be necessary for adoption validity.

Who may adopt?

² Ghanta China Ramasubbaya v. Moparthi Chenchuramayya, 1948 50 BOMLR 547

Eligibility of man

Section.7: “It states that any male Hindu who is of sound mind and is not a minor can take a son or a daughter in adoption. Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world on has ceased to be Hindu or has been declared by a court of competent jurisdiction to be of sound mind.

If a person has more than one wife living 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. If a Hindu male wants to adopt a female, the age difference between the adoptive father and the daughter must be twenty-one years”.³

Case- *Badrilal v. Bheru* 1986⁴

The court held in this case that where there is more than one wife, all wives' consent is needed for legal adoption, and the wife who is the senior in the marriage is considered the adoptive mother, with all other wives, assumed to be stepmothers.

Section- 8

Eligibility of female

Any female Hindu who is of sound mind and is not a minor can take a son or a daughter in adoption. Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Hindu or has declared by a court of competent jurisdiction to be of unsound mind.⁵

Who may give Child in Adoption?

Section-9⁶: No one other than the child's parent, mother, or guardian has the authority to place the child for adoption. If the father is alive, he alone has the right to give in adoption; however, this right cannot be exercised without the mother's consent unless the mother has fully and permanently renounced the world or has ceased to be a Hindu, or has been declared

³ The Hindu Adoption and Maintenance Act, Sec.7 Act of Parliament, 1956

⁴ *Badrilal v. Bheru*, 1986 (1) HLR 81.

⁵ The Hindu Adoption and Maintenance Act, Sec. 8 Act of Parliament, 1956

⁶ The Hindu Adoption and Maintenance Act, Sec. 9 Act of Parliament, 1956

insane by a court of competent jurisdiction. If the father is deceased, has absolutely and permanently renounced the world, or has ceased to be a Hindu, or has been declared insane by a court of competent jurisdiction, the child could be placed for adoption by the mother. If the father has died, or has fully and permanently renounced the earth, or has stopped being a Hindu, or has been excommunicated, declared insane by a court of competent jurisdiction, the mother may place the child for adoption. When both the father and mother have died, or have fully and permanently renounced the world, or have abandoned the child, or have been declared insane by a court of competent jurisdiction, or when the child's parentage is uncertain, the child's guardian will place the child for adoption with the court's permission. When approving, the court must be assured that the adoption is in the best interests of the child and that the child's needs will be taken into account, taking into account the child's age and maturity. The court must be assured that no payment or compensation has been given or taken in exchange for the adoption, except as the court may authorize.

Case- *Dhanraj v. Smt. Suraj Bai*⁷

In this case, the Supreme Court ruled that a stepmother could not adopt her stepson. Only a natural parent has the authority to place a child for adoption.

Who may be adopted?

Section- 10⁸

- Only a child that meets those criteria may be adopted:
- The child must be Hindu, as HAMA only applies to Hindus.
- The child has not been adopted previously—as mentioned in the section, only natural parents or guardians can give adoption. Adoptive parents are unable to place their child for adoption. HAMA prohibits the adoption of two children at the same time.
- He or she is not married unless the parties have agreed to a custom or usage that allows people who are married or have been married to be adopted.
- A child has not reached the age of 15 years unless the parties have agreed to a custom or usage that allows individuals who have reached the age of 15 years to be adopted: Adoption of a child above the age of 15 would be invalid if customs were not

⁷ Dhanraj v. Smt. Suraj Bai, 1975 AIR 1103, 1975 SCR 73

⁸ The Hindu Adoption and Maintenance Act, Sec. 10 Act of Parliament, 1956

invoked. When a married man was adopted and a child was born after the adoption, it was determined that the adoption was legitimate since it was approved by custom, and the child born would be a member of the adoptive family.

Other conditions for a valid adoption

Section -11⁹

It states that two or more people cannot adopt the same child at the same time. This means that a husband or wife may adopt a child with the consent of the other, but two friends or unmarried people cannot adopt a child together.

It also states that the adoption must be given in by the parents or guardians concerned, or under their jurisdiction, to transfer the child from the family of adoption to the family of adoption, or in the case of an abandoned child, from the place of a family where it was bought up to the family of adoption.

Effect of the adoption (Section- 12¹⁰)

It notes that after a legal adoption, the adoptive child's links to his or her birth families are permanently broken for all purposes and that these ties are replaced by those formed by the adoption in the adoptive family.

He has the same rights as if he had been born into the family on the day of his adoption. The aim is to establish a legal adoptive child-adoptive parent partnership so that the child does not become destitute and lonely later on.

The Personal Laws Amendment Act, 2010:

The Guardians and Wards Act of 1890 and the Hindu Adoptions and Maintenance Act of 1956 was also amended by this act. The mother was not included as a guardian alongside the father under subsection (b) Section 19 of the Guardians and Wards Act 1890, but with this provision, the mother is included alongside the father. Section 8(c) of the Hindu Adoption

⁹ The Hindu Adoption and Maintenance Act, Sec. 11 Act of Parliament, 1956

¹⁰ The Hindu Adoption and Maintenance Act, Sec. 12 Act of Parliament, 1956

and Maintenance Act 1956, which prohibits a married woman from adopting a child because of her marital status, has been amended.

The Juvenile Justice (care and protection) Act of 2000, amended in 2006:

This legislation was primarily enacted to provide for the treatment and rehabilitation of children who had broken the law. A law was needed to ensure that all children, whether adopted or biological, had the same rights. There was also a need for a law that separated adoption from the adoptive parents' faith. This act took up all of the available space, and a small portion was added for adoption. Since then, the rules have been extended by the Amendment Act of 2006.

The main features of the act are:

- An adoptee has the same legal rights as a biological child.
- Adoption is possible for single persons.
- The adoptive parents' religion is unimportant.
- Any Indian citizen can adopt a child who is legally available for adoption, and the adoption is final.
- This Act covers the entire country, but it can only be implemented in areas where Juvenile Justice Boards have been established. This is a continuous operation, with the majority of states issuing notices that make up these boards.

ADOPTION UNDER HINDU LAW

Adoption was seen as a sacramental rather than a secular act under Shastri Hindu law. People believe in a variety of adoption artifacts. Hindus believe that those who die without only a son would be able to save their father from this fate by going to a place named poota. The adopted son should, according to Hindu scriptures, be a manifestation of the natural son. This ensured the well-being and well-being of the adopted son. He became not only adoptive parents but also the adoptive family's paternal and maternal relations. As a result, he can't marry his adoptive parents' daughter, whether she's natural or adopted. The primary purpose of modern adoption laws is to provide comfort and relief to a childless parent while rescuing

the needy, unwanted, destitute, or orphaned child. Hindus embrace adoption, but Muslims, Christians, and Parsis do not.

Case- *Chandrasekhara case*¹¹

The legitimacy of adoption must be judged by moral rather than temporal considerations in this situation, and property devolution is therefore of secondary importance.

THE GUARDIAN AND WARDS ACT, 1890

Before the Juvenile Justice (Care and Protection) Act of 2000, this was the only piece of legislation that permitted non-Hindus to adopt. This was India's first secular law allowing for the adoption of an infant. The main points of this act are:

- A ward maybe someone under the age of 18, and the guardianship can be terminated by the courts or the guardian.
- Any property or goods left to the child must be bequeathed by a will.
- Blood members have the moral right to appeal to the will.
- All parents can legally be guardians.
- Single persons can adopt regardless of their age gap.

GUARDIANSHIP UNDER HINDU LAW

The court established the law of guardianship and determined that the child's natural guardian is the father, and if the father is deceased, the child's natural guardian is the mother, and no one else can be a natural guardian of a minor child. The Hindu Minority and Guardianship Act, 1956 codified and reformed the Hindu Law of Guardianship. Hindu minorities and guardianship laws were codified in the Hindu Minority and Guardianship Act of 1956. It has maintained the superior right of a parent, just as it has in the case of unmodified rule. It specifies that a child is a minor before he or she reaches the age of eighteen. For both boys and unmarried girls, the natural guardian is the father, followed by the mother. The mother's prior right is only recalled for the treatment of children under the age of five. In the case of illegitimate children, the mother has a stronger case than the putative parent. Guardianship

¹¹ LEGAL SERVICE INDIA, <http://legalserviceindia.com> (April22,2021, 8:30)

entails control over both the minor's person and his land, as the act makes no distinction between them. The Act stipulates that the welfare of the child must be the primary concern when deciding on guardianship. Section 6 of the Hindu Minors Act defines the natural guardians of a Hindu minor. Section 7 of the Act discusses an adopted son's natural guardianship.

According to Section 4 of the Hindu Minority and Guardianship Act, 1956

- a) “minor” means a person who has not completed the age of eighteen years;
- b) “guardian” means a person having the care of the person of a minor or of his property or both of his person and property, and includes-
 - (i) A natural guardian,
 - (ii) A guardian appointed by the will of the minor’s father or mother,
 - (iii) A guardian appointed or declared by a court, and
 - (iv) A person empowered to act as such by or under any enactment relating to any court of wards;

“natural guardian” means any of the guardians mentioned in Section 6.¹²

Who can be the Natural Guardian?

The natural guardian of a minor child, according to the Hindu Minority and Guardianship Act of 1956, is the father of the minor child; if the father is deceased, the mother is the natural guardian of a minor child; and the natural guardian of a wife is her husband. Natural Guardians are addressed in Section 6¹³ of the Hindu Minority and Guardianship Act. It notes that the natural guardians of a Hindu minor, both in terms of the minor's persons and property (excluding the minor's undivided interest in the joint family property), are:

- (a) in the case of a boy or an unmarried girl, the father, followed by the mother; given, however, that custody of a minor under the age of five years is ordinarily with the mother;

¹² Hindu Minority and Guardianship Act, 1956 § 6, No.6, Acts of Parliament, 1956 (India).

¹³ Hindu Minority and Guardianship Act, 1956 § 6, No.6, Acts of Parliament, 1956 (India).

- (b) the mother, and then the father, in the case of an illegitimate boy or illegitimate unmarried girl;
- (c) the husband in the case of a married woman:

Provided, however, that no person shall be entitled to serve as the natural guardian of a minor under the provisions of this section if he is no longer a Hindu, or if he has fully and permanently renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

The terms "father" and "mother" in this section do not include a step-father and a step-mother.

The following steps may be taken to end the Guardianship:

1. when the guardian has finally renounced the world;
2. when the guardian is no longer Hindu;

The court held in the case of *E.M. Nadar v. Shri Haran, 1992*¹⁴, that the father is the guardian of the minor child even though they live apart.

The court held in *Vijayalakshmi v. Police Inspector, 1991*¹⁵, that if the father converts to a non-Hindu religion, the mother becomes the natural guardian of the minor child.

The mother is the natural guardian of a child until the age of five years, according to the court in *Chandra v. Prem Nath, 1969*¹⁶.

R. Venkat Subaiya v. M. Kammalama, 1992, and *Smt. Geeta Hariharan v. Reserve Bank of India, 1999*¹⁷, are two similar cases.

The court decided in these two cases that if the father is unable or does not have adequate funds, the mother will be the natural guardian.

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¹⁴ AIR 1992 Ker 200

¹⁵ AIR 1991 Mad 243, II (1991) DMC 319

¹⁶ AIR 1969 Delhi 283, ILR 1969 Delhi 291

¹⁷ AIR 1999, 2. SCC 228

VOL. 1, ISSUE 2
LEGALITY VIABILITY LAW RESEARCH JOURNAL

The powers of a natural guardian are outlined in Section 8¹⁸ of the Hindu Minority and Guardianship Act of 1956.

1. The natural guardian of a Hindu minor has the authority to take all acts necessary or reasonable and proper for the minor's benefit or the realization, protection, or benefit of the minor's properties, but the guardian cannot bind the minor by a personal covenant, according to the provisions of this section.
2. Without the prior approval of the court, the natural guardian may not:
 - a) mortgage or charge any part of the minor's immovable property, or
 - b) lease any part of such property for a period exceeding five years or for a term lasting more than one year beyond the minor's attainment of majority.
3. Any disposition of immovable property by a natural guardian in violation of subsection (1) or sub-section (2) is voidable at the request of the minor or anyone alleging under him.
4. Except in cases of necessity or for an obvious benefit to the minor, no court shall grant permission to the natural guardian to do any of the actions mentioned in subsection (2).
5. The Guardianship and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for court permission under subsection (2) in all respects as if it were an application for court permission under section 29 of that Act, and in particular:
 - a) proceedings in connection with the application shall be deemed to be proceedings under that Act.
 - b) the court must follow the procedure and exercise the powers set out in sections 31(2), (3), and (4) of that Act; and
 - c) An appeal shall lie to the court from which appeals normally lie from the judgments of that court from an order of the court denying permission to the natural guardian to do any of the actions specified in sub-section (2) of this section.

¹⁸ Hindu Minority and Guardianship Act, 1956 § 8, No.6, Acts of Parliament, 1956 (India).

6. In this section, "court" means the city civil court, a district court, or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situated, and "court" means the court.

The powers of a natural guardian may include:

1. the right to education;
2. the right to choose one's religion;
3. Custody rights;
4. The ability to guide movement;
5. The right to be chastised.

The Supreme Court held in *Manik Chandra v. Ram Chandra, 1981*¹⁹, that the meanings of "necessity" and "advantage" of a minor are very wide, and that courts have the right to broaden their reach based on the facts of the case before granting permission.

A minor is incompetent to serve as guardian of the property of any minor, according to Section 10²⁰ of the Hindu Minority and Guardianship Act, 1956.

In the case of *Ibrahim v. Ibrahim 1916*²¹, it was decided that a minor may be the guardian of his wife but not her house.

The guardian who assumes all of the powers of a natural guardian but is limited by the Hindu Minority and Guardianship Act, 1956, is known as a Testamentary Guardian.

In the case of *Paras Nath v. the State of Allahabad*²², the court determined that a minor widow's father-in-law was the legitimate guardian. The Nagpur High Court, as well as the Madras High Court, did not agree with this viewpoint.

¹⁹ AIR 1968 MP 150

²⁰ Hindu Minority and Guardianship Act, 1956 §10, No.6, Acts of Parliament, 1956 (India).

²¹ (1916) ILR 39 Mad 608

²² AIR 1969 All 116, 1969 CriLJ 350

LIABILITIES OF GUARDIAN:

- 1) All guardians are individually responsible for any breach of confidence.
- 2) Since the guardian's legal duty is fiduciary, he cannot take control of the minor's property against the minor's will, no matter how long he is in office.
- 3) The law stipulates and mandates that a guardian handle the minor's property, company, and affairs prudently.
- 4) The guardian is obligated to keep all financial benefits gained from the minor's estate for the minor's benefit.
- 5) The fiduciary position of the guardian obligates the guardian to render all accounts. However, after the minor reaches the majority and has settled his accounts with the guardian, he can only have them reopened if he can prove the guardian's fraud.

RIGHTS OF GUARDIANS:

1. The guardian has the right to represent the minor in all legal proceedings.
2. The guardian has the option of referring the matter to arbitration.
3. The guardian has the right to be reimbursed from the minor's property for any costs incurred on the minor's behalf.
4. The guardian of the minor's property has the right to hold the minor's property exclusively.

REMOVAL OF GUARDIANS:

1. If the guardian is no longer Hindu
2. If the guardian has inevitably and abandoned the planet

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CONCLUSION

This study and analysis reveal that under Hindu law, there is only one legislation that acknowledges adoption: i.e. is a law that governs the adoption and maintenance of Hindu children. An adoption is a form of communication institution that undergoes many changes over time. It has a variety of goals that evolve with time. The earlier motive in Hindu law was faith, but now many new motives offer many benefits to both children and parents. Hindu Law is the only personal law that permits adoption. We may infer from this study and analysis how necessary adoption is, the legal conditions of adoption, and the adoptions are legitimate under Hindu Law.

The Hindu Minority and Guardianship Act of 1956, as well as the Guardian and Wards Act of 1890, deal with guardianship of the minority, as well as who can be a natural guardian, and other issues. It is also a social institution, and as previously mentioned, it originated in the British period, and how guardianship is extremely necessary because minors are unable to make their own decisions and therefore need adequate supervision and maintenance. And guardianship is needed because anyone may claim to be a minor's natural guardian if they don't have guardianship. We may infer from this study that guardianship is necessary for minors and that the Hindu Law contains legal provisions for valid guardianship.