Subject Name: Hindu Law
Topic Name: Conditions of Adoption

Table of Content:-

Overview..... 1
Traditional Hindu Beliefs and Practices in Adoption..... 2
Modernization of Hindu Adoption Laws..... 2
Who may adopt?..... 3
Who May Give in Adoption..... 4
Who May be Taken in Adoption..... 5
Other Conditions of a Valid Adoption..... 5

Overview

Adoption is defined as the process wherein a person legally takes on another individual as their child, even though they are not biologically related. It involves transferring a child from their birth family to another family through a formal arrangement, often initiated by the child's biological parents as a gift to the adopting parents.

In India, adoption laws are not standardised across all communities. Legal provisions for adoption exist only for Hindus, which also encompass Buddhists, Jains, and Sikhs under the Hindu Adoption and Maintenance Act (H.A.M.A). However, other religious communities such as Muslims, Christians, Parsis, and Jews do not have specific adoption laws applicable to them.

Under Islamic law, adoption is not recognized by Sharia, meaning that Muslims do not have a legal framework for adoption. According to Muslim law, adoption isn't considered a method of establishing filiation unless there exists a specific family or tribal tradition, such as those found in regions like Punjab and Oudh. Even if a Hindu converts to Islam, they cannot adopt a child. Moreover, if such a conversion takes place and adoption occurs, the adopted child would not have full rights of inheritance. It's important to note that the retention of Hindu customs related to inheritance and succession by Hindu converts to Islam does not extend to the Hindu practice of adoption.

For Christians, Parsis, and Jews, in the absence of specific adoption laws, they must rely on the provisions outlined in the Guardians and Wards Act of 1890. However, under this law, parents are only appointed as guardians of a child, with no entitlement to inheritance. Consequently, the child remains a foster child rather than an adopted one.

In contrast, Hindu law has recognized adoption since ancient times, as have the legal systems of ancient Greece and Rome. The objectives of adoption are twofold: firstly, religious, aiming to provide spiritual benefits to the adopter and their ancestors by having a son to perform funeral rites

and offerings; and secondly, secular, intending to secure an heir and perpetuate the adopter's name.

Important Links for Judiciary Free Resources (Click on Each to Open Respective Pages)	
Subject Wise Mains PYQ Solution	Essay for Judiciary
Subject Wise Notes	Legal Doctrines
Landmark Judgements	GS Notes
Weekly Current Affair	Subject Wise Prelims PYQ Solution
Free Answer Writing Course	Judgement Writing
Telegram Link	Youtube Link

Traditional Hindu Beliefs and Practices in Adoption

Under the old Hindu law, a dattak (adopted) son held a distinct status, not considered a true son because traditional beliefs held that a son was responsible for performing funeral rites and continuing the family lineage. Adoption was acknowledged but treated as a sacred sacrament, with adoption of a son being primarily recognized for spiritual merits. Consequently, the adoption of daughters was not permissible.

Moreover, it was firmly believed that an adopted son should closely resemble a natural-born son, hence two Hindus were not permitted to adopt an orphan or illegitimate child. This was based on the principle that the adopted son should mirror the characteristics of a biological son.

Additionally, Hindu law imposed restrictions on adoption based on the legal eligibility for marriage. A Hindu was prohibited from adopting a son whose mother he could not have lawfully married, thus preventing scenarios such as the adoption of a sister's son. These rules were established to maintain the sanctity and continuity of familial traditions within Hindu society.

Modernization of Hindu Adoption Laws

The Hindu Adoptions and Maintenance Act of 1956 marked a significant departure from traditional Hindu law. This Act introduced several progressive changes, allowing for the adoption of daughters, illegitimate or orphaned children, and even a sister's son, which were not permissible under the old law.

In the past, the wife's consent was not a mandatory requirement for adoption. However, under the provisions of the Act, the wife's consent became essential for the adoption process.

Moreover, the Act transformed the concept of adoption, shifting it away from being solely a sacred or religious ritual. Unlike before, the Act removed the necessity for any religious ceremonies to be performed as part of the adoption procedure. This shift reflects a more modern approach to adoption, emphasising legal and procedural aspects rather than purely religious considerations.

Section 11 (vi) (proviso) stipulates that the performance of datta homam, a religious ritual, is not required for the adoption to be considered valid. Even in cases where the datta homam is conducted, the adoption is deemed to have occurred at the time of the actual giving and receiving of the child, rather than when the religious ceremony is performed. This provision underscores the legal significance of the act of adoption itself, prioritising the formal transfer of parental rights over ceremonial observances.

The ceremony of adoption, as prescribed by the Act, centres around the formal act of giving and taking the child. This pivotal moment signifies the transfer of parental rights with the intent to integrate the child into the adopting family. Whether the child is being transferred from their biological family or from the environment in which they were raised, the giving and receiving ceremony is essential for the adoption to be legally recognized (referenced in Section 77 (vi)).

While the Hindu Adoptions and Maintenance Act of 1956 introduces notable changes, it still retains certain elements from the old Hindu law. Notably, adoption remains a private affair without state supervision. In most cases, no court order is required for the adoption to be valid, except when the guardian is involved in the adoption process. Additionally, the Act maintains the restriction on the adoption of more than one son, aligning with traditional practices.

Once adoption is finalised, it becomes an irreversible and permanent arrangement. A valid adoption cannot be revoked by the adopter, the natural parents, or any other party involved. Similarly, the adopted child cannot renounce their adoptive parents and return to their biological family (as stated in Section 15). Even if adoption is undertaken by two individuals, there are no circumstances under which they can terminate the adoption and rid themselves of the child.

Who may adopt?

Capacity of a Male Hindu to adopt

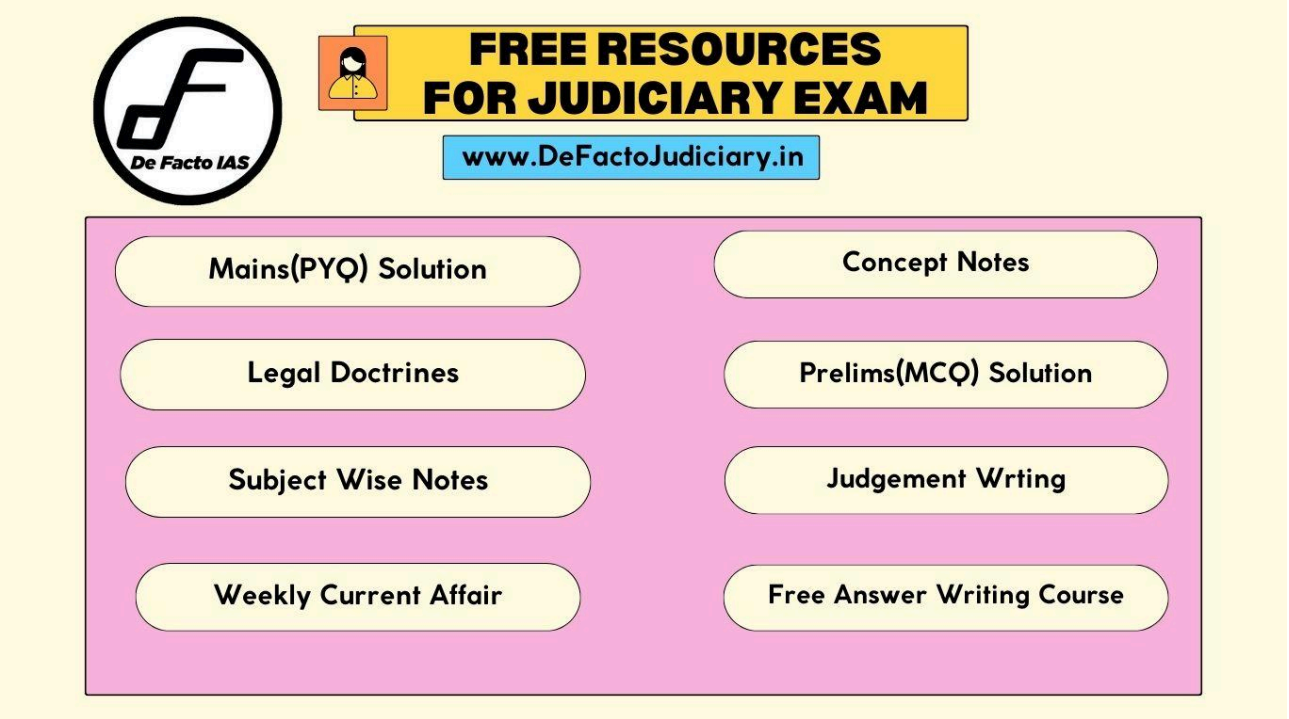
- Any major Hindu male (aged 18 years or above) of sound mind can adopt, regardless of whether he is single, widowed, divorced, or married.
- However, for a married Hindu male, obtaining the consent of his wife is obligatory, unless certain conditions are met such as the wife ceasing to be Hindu, renouncing the world, or being declared of unsound mind by a court.
- If the male has more than one wife, consent from all wives is necessary for the adoption to be valid. Failure to obtain consent from any wife renders the adoption void.

Capacity of a Female Hindu to adopt

- Any major Hindu female (aged 18 years or above) of sound mind can adopt, regardless of her marital status, including being unmarried, widowed, divorced, or if her marriage has been dissolved.
- Even an unmarried or widowed woman of unchaste character retains the capacity to adopt.
- However, a married woman does not have the capacity to adopt, except in specific circumstances where her husband has ceased to be Hindu, renounced the world, or been declared of unsound mind by a court. In such cases, she can adopt without her husband's consent.

Changes after the 2010 Amendment

- The amendment introduced a new provision (Section 8) which states that any female Hindu of sound mind and not a minor has the capacity to adopt a son or daughter.
- However, if she has a living husband, she cannot adopt without his consent, except under specific conditions as mentioned above.



Who May Give in Adoption

Father

- Under Section 9 (i), only the father, mother, or guardian of a child may have the capacity to give the child in adoption, provided each of them is Hindu.
- The father, if alive, has the sole right to give the child in adoption. However, this right cannot be exercised without the consent of the mother, except in specific circumstances such as the mother renouncing the world, ceasing to be Hindu, or being declared of unsound mind by a court.

Changes after the 2010 Amendment

- The amendment introduced Section 9 (ii), which grants equal rights to the father and mother to give a son or daughter in adoption, subject to specific conditions similar to those outlined for the father.
- The term "father" does not include adoptive, putative, or step-fathers, meaning they cannot give a child in adoption.

Mother

- Under Section 9 (iii), the mother may give the child in adoption if the father is deceased, has renounced the world, ceased to be Hindu, or has been declared of unsound mind. However, this provision has been omitted by the 2010 Amendment.
- A mother of an illegitimate child does not have the power to give the child in adoption, and the question of the putative father's consent does not arise.
- A remarried woman retains the right to give her son born from her deceased husband in adoption, as per the Hindu Widow Remarriage Act of 1856.
- Similar to the father, the term "mother" excludes adoptive or step-mothers from having the capacity to give a child in adoption.

Guardian

- When both parents are deceased, have renounced the world, abandoned the child, or have been declared of unsound mind, the guardian of the child may give the child in adoption with prior permission from the court, as per Section 9 (iv).
- The guardian can be either de jure or de facto, including individuals such as orphanage managers or persons who have brought up the child.

Who May be Taken in Adoption

According to Section 10 of the Hindu Adoptions and Maintenance Act:

1. Hindu Status: The individual to be adopted must be Hindu.
2. Not Already Adopted: They must not have already been adopted by another individual.
3. Unmarried: Unless custom or usage permits the adoption of married individuals, the person must not be married.
4. Age Limit: The individual must not have reached the age of 15 years, unless custom or usage allows for the adoption of persons aged 15 years or more.

The Hindu Adoptions and Maintenance Act does not recognize the adoption of non-Hindus by Hindus. The adopted child must also be Hindu, although exceptions may apply for orphans, foundlings (whose parents are unknown), or abandoned children (whose parents are known). If the child is taken from an orphanage, it must be verified whether the child has been raised as a Hindu.

Once adopted, a child cannot be given in adoption again. However, in Bombay and among Jats in Punjab, the adoption of married individuals of any age is permitted.

The consent of the child to be adopted is not required. Even a lunatic or illegitimate child can be validly adopted. Adoption of an only or eldest son is considered valid. It is irrelevant whether the child is related to the adopter by blood or marriage, or if the child has any physical or mental deformities.

The Act limits the number of children an individual can adopt: one son and one daughter. Therefore, no person can adopt more than one son or one daughter under the Act.

Other Conditions of a Valid Adoption

Adoption of a Son

- The adoptive father or mother must not have a Hindu son, grandson, or great-grandson (whether by legitimate blood relationship or adoption) living at the time of adoption.
- However, if the son, grandson, or great-grandson has ceased to be Hindu, the adoption of a son will be considered valid.
- The existence of an illegitimate son is not a hindrance to a male or female Hindu adopting a son. However, the presence of a son deemed legitimate under Section 16 of the Hindu Marriage Act, arising from a void or voidable marriage, would prohibit the adoption of a son.
- Similarly, the presence of a step-son does not bar the right of a Hindu female to adopt a son.
- The presence of a widowed daughter-in-law, even if pregnant, does not prevent a sonless male or female from making an adoption.

Adoption of a Daughter

The adoptive father or mother must not have a Hindu daughter or granddaughter (whether by legitimate blood relationship or adoption) living at the time of adoption, unless such daughter or granddaughter has ceased to be Hindu.

Age Difference

If the adoption is by a male and the child to be adopted is female, the adoptive father must be at least 21 years older than the child. This prevents exploitation of the adopted child.

Similarly, if the adoption is by a female and the child to be adopted is male, the adoptive mother must be at least 21 years older than the child.

Limitation on Multiple Adoptions

Two persons cannot adopt the same child. This means that two siblings, two friends, or any other combination of individuals cannot jointly adopt the same child. Additionally, a child cannot simultaneously be considered a son or daughter in both their natural family and the adoptive family.