

The only codified law governing adoption in India is the Hindu Adoptions and Maintenance Act, (HAMA) 1956. The law applies to all Hindus including Buddhists, Jains, Sikhs and all those who are governed by Hindu Law.

## Know Your Rights

# Do's and Don'ts in Adoption Law

### *Who is eligible to adopt under the Hindu Adoptions and Maintenance Act?*

Any Hindu male can adopt under the Act provided:

- He has attained majority and is of sound mind.
- His wife consents to the adoption, in case he is married and has a living wife.
- His wife has renounced the world
- She has ceased to be a Hindu
- She is declared by a court of competent jurisdiction to be of unsound mind.

### *Can a married woman adopt?*

She can adopt if :

- Her husband is dead.
- She is divorced
- Her husband has either renounced the world, ceased to be a Hindu or been declared to be of unsound mind by a court of competent jurisdiction.

### *Can an unmarried woman adopt?*

Yes, an unmarried female, who is a Hindu, who has attained majority and is of sound mind can adopt.

### *Who is eligible for adoption?*

A girl or boy can be adopted, if he or she is a Hindu, he or she has not been previously adopted, he or she is unmarried and if he or she is below the age of fifteen. However, if the persons adopting belong to a Hindu community which has a custom or usage permitting persons who are married or have completed the age of fifteen years to be also taken in adoption, then such an adoption is also legal.



### *What are the essential requirements of a valid adoption?*

Adoption shall be valid

- If the person adopting has the capacity and also the right to take in adoption.
- If the person giving in adoption has the authority to do so.
- If the person adopted is considered legally eligible for adoption as per criteria given above in adoption.

### *Can a valid adoption be nullified?*

- No adoption which has been carried out by following valid procedures, 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.
- However, if there is any fraud in the adoption, the Court can nullify such an adoption.

### *Who are the persons legally entitled to give a child in adoption?*

- A father can give a child in adoption only with the consent of the mother. Such consent is not required if the mother has renounced the world, ceased to be a Hindu or is of unsound mind.
- A mother can give a child in adoption only if the father is dead or has renounced the world or has ceased to be a Hindu or is of unsound mind.
- A guardian can also give a child in adoption under the following circumstances:
  - If both the parents are dead.
  - If both the parents have abandoned the child.
  - If both the parents are of unsound mind.
  - If the parentage of the child is not known.

A guardian can give a child in adoption to any person including himself/herself only with the permission of the court.

### *Are there any restrictions in adoption?*

- A couple cannot adopt a child if they already have adopted or have a child of the same gender.
- If adopting parents have a living son or daughter they cannot adopt a child of that gender. Thus no Hindu can adopt more than two children, one son and one daughter.
- A Hindu female adopting a son should be at least 21 years older than

the child. Similarly, if a Hindu male is adopting a female child, he too should be at least 21 years older than the girl.

***What are the rights of the adopted child in the property of adopted parents?***

The adopted child has a full right to inherit the property of his/her adopted parents at par with biological children. However, an adoption does not take away the right of an adoptive father or mother to dispose off their property by transfer or by writing a will in favour of another person or institution. In other words, they can disinherit wholly or partly, an adopted child just as they can disinherit a biological child.

***Can money be given or taken in consideration of adoption?***

The giving of any consideration or receiving payment for giving a child in adoption is illegal and punishable. Both the giver and taker of such monetary consideration can be punished with imprisonment up to six months or with fine or both.

***What are the rights of an adopted child?***

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 and from such date 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 adoptive family.

***Can Muslim and Christians adopt?***

- Muslims and Christians do not have a codified law for adoption. Therefore, till 2001 they could only adopt under the Guardianship and Wards Act of 1890 which gives very limited rights both to the adopted child as well as the adoptive parent/s.
- However, with the enactment of the Juvenile Justice Act (JJA) in 2000, and guidelines issued by the Central Adoption Resource Agency established by the Government of India to facilitate adoption, every person who is otherwise eligible, no matter what his/her religion, is free to adopt an orphan child.

- JJ Act was passed with the express purpose of facilitating the rehabilitation of orphans and abandoned children. The Act lays down that an orphan or an abandoned child who has no family to take care of him/her, has no religion. Therefore, a person of any religion can adopt such a child. Under JJ Act, only unrelated orphans can be adopted whereas under HAMA children of close relatives can also be adopted.

***How many children can a person/family adopt under JJ Act.?***

- A major improvement in this Act is that a person or family can adopt as many children as they like and of whichever gender they like. By contrast, under the Hindu Adoption Act a family can adopt one son or one daughter if they don't have a child of that gender.
- Since there is a conflict between the provisions of the Hindu Adoption Act and Javenile Justice Act, the latter has been challanged in the Supreme Court. □



**UMEED-MANUSHI HEALTH SERVICE**



Umeed-Manushi Health Service will start a mobile clinic for villages in Kashmir on September 9, 2004. This is a joint initiative by MANUSHI and Umeed Trust formed by Mehbooba Mufti. Health services in J&K villages broke down as a consequence of battles between terrorists and state agencies. At the same time, physical and mental illnesses have become more rampant due to the great stress and insecurity under which people live. We are aiming at reaching out especially to women and children whose health needs are most neglected. This is a modest start to fill that vacuum. If the project is successful, we hope to replicate it for many more villages. We have opted for a mobile clinic so that with one van we can cover about 12 villages every week.

**We thank all those who contributed financially for this pilot project.**