

"requisites victim of  
congenital diseases,  
a son



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“ Requisites of a valid adoption—No adoption shall be valid unless— (i) The person adopting has the capacity and also the right to take in adoption; (ii) The person giving in adoption has the capacity to do so, (iii) The person adopted is capable of being taken in adoption.

(iv) The adoption is made in compliance with the other conditions mentioned in this chapter.”

**Pre Act:**

(1) The person adopting was lawfully capable of taking in adoption. (2) The person giving in adoption was lawfully capable of giving in adoption.

(3) The person adopted was lawfully capable of being taken in adoption. (4) The adoption was completed by an actual giving and taking. (5) The ceremony called Datta Homam (oblation to fire) had to be performed.

**Post Act:**

(1) The person adopting has the capacity and also right to take in adoption (Section 7 & 8) (2) The person giving in adoption has the capacity to do so (Section 9). (3) The child adopted is capable of being taken in adoption, (Section 10).

(4) The adoption is made in compliance with the other conditions mentioned in Chapter II i. e., (Section 11), which includes actual giving and taking.

(5) Datta Homam is no longer necessary.

**Who may adopt—Pre Law?**

Any person who was not minor, and was of sound mind could adopt in case he was issueless. He could himself adopt or his widow could adopt after she had received his consent during his lifetime but such adoption was treated as adoption on behalf of her husband. At the time of adoption there should be neither a natural son nor an adopted son. But where the natural son was of unsound mind, idiot or disabled or a victim of congenial diseases, a son could be taken adoption. A girl could not be adopted as she was to be given gift by her parents themselves.

Moreover she does not serve those purposes, e. g., to give funeral oblations or Pindadan to the father and forefathers, which a son could fulfil. The father could also adopt a son in case of conversion by his natural son to some other religion. Under old law women did not enjoy the right to take or give a son in adoption. The right to do so could be derived from her husband and whenever a son was adopted by her, he was deemed to be the son of her deceased husband. This law was based on a text of Vasishtha which read like this " Let no women give or take a son in adoption except with the consent of her husband".

This text has been interpreted by the different schools of Hindu law differently, which can be described as under— (a) According to the Mithila School, a Hindu female could adopt a son only during the lifetime of her husband, as his consent could be obtained during his lifetime, after his death she could not adopt at all. Thus adoption by her was possible only during the lifetime of her husband. (b) According to Bengal and Benaras schools of Hindu law, a Hindu female could adopt a son after the death of her husband  
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only with his consent which she received during his lifetime. But she could not adopt during his lifetime. (c) According to Maharashtra School, the text of Vasishtha does not restrict the right of a Hindu female to adopt a son on the death of her husband. The question of consent is relevant only when adoption is made by her during the lifetime of her husband. The widow could adopt on behalf of her minor husband and in such cases the consent of the husband was presumed.

(d) The interpretation given by the Madras School of Hindu law is somewhat in between the Bengal and Maharashtra schools of Hindu law. According to this school the consent of the husband includes the consent of the collateral of the husband of the widow under whose protection she is living after the death of her husband. In other words in the absence of the consent of the husband the widow could adopt with the consent of the Sapindas of the husband. Thus in Madras School after the death of the husband without the consent of the guardians, that is, of Sapindas of the husband or without the prior consent of the husband a widow cannot adopt at all.

**Present Law:**

Under the present law, according to Section 6 of the Hindu Adoption and Maintenance Act there are four essential conditions for a valid adoption. These conditions are mandatory, if these conditions have not been complied with the adoption would become void. These conditions are as follows: (1) The person adopting a child has the capacity, and also the right, to take in adoption, (Sections 7 and 8) (2) The person who is giving the child in adoption has the capacity to do so.

(Section 9). (3) The person adopted is capable of being taken in the adoption. (Section 10). (4) The adoption is made in compliance with the other conditions mentioned in Section 11 of the Act. Failure of compliance with of any these requirements will render the adoption null and void. The section is of a mandatory character.

The requirements are cumulative and must be complied with. The requirement about giving in adoption by a competent person is applicable both in case of a minor and an adult person who by custom, may be adopted.

**Who Can Adopt:**

Sections 7 and 8 of the Hindu Adoption and Maintenance Act, 1956 lay down the rule as to who can adopt. Section 7 deals with the rights of a Hindu male to adopt a child and Section 8 deals with the rights of a female to adopt.

For a valid adoption the adoptor must have the capacity and right to adopt simultaneously.