POST-CONSTITUTIONAL
STATUS OF WOMEN AND
LAW OF ADOPTION
3.1. Introduction:

Long before independence the theme on which Mahatma Gandhi wrote repeatedly was the need to improve the status of Indian women. He emphasized the fact that women should not suffer from any disability or discrimination. He respected their ‘personal dignity’ without ‘belittling their roles as mothers and wives’ and gave women with men ‘equal tasks to
perform in the achievement of freedom’. The Mahatma said that “women have been suppressed under custom and law for which man was responsible and in the shaping of which she had no hand. Rules of social conduct must be framed by mutual co-operation and consultation. Legislation has been mostly done by men and has not been always fair.”

The status of women in British India and the Princely states was worse and the various practices like ‘sati’, ‘widowhood’, ‘child marriage’ ‘female infanticide’ were all seen as reflective of the backwardness of Indian society and were therefore targeted for change. The role of women in the National movement and the rise of the women movement during the Pre-independence days ensured that the Constitution of India and independent India would see a change for the better in the status of women.

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The 26\textsuperscript{th} January, 1950 was a red letter day in the history of India which is marked by the honour of fortune when the Constitution was adopted by the Nation. Constitution of India is a basic, living, organic document which provides for women empowerment as well as women protection. The Preamble is the explanation to the Constitution which does not differentiate men and women rather treats them equally. The principle of gender equality is enshrined in the Indian Constitution in its Fundamental Rights, Fundamental Duties, Directive Principles. The Constitution of India guarantees to all Indian women equality (Article 14), no discrimination by the state (Article 15(1)); equality of opportunity (Article 16) and equal pay for equal work (Article 39(d)). In addition, it allows special provisions to be made by the state in favour of women and children (Article 15(3)), renounces practices derogatory to the dignity of women (Article 51(A) (e)) and also allows for provisions to be made by the state for securing just and humane conditions of work and for maternity relief (Article 42). Again, there are numerous laws specially designed for protection and upliftment of women in every sphere of their life, like in the areas of personal, labour, service, criminal and socio economic matters. Crimes like rape, kidnapping, eve teasing and indecent exposure can be grouped as crimes against women.
Rape is the worst crime against women after murder and the maximum punishment under the Indian Penal Code (IPC) is life imprisonment and minimum is seven years. The Criminal Law(Amendment) Act which came into force on the 3\textsuperscript{rd} day of February, 2013 is a big bold step of our democracy to protect women from the terror of sexual harassment. A good number of amendments have been effected in IPC, Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872. Section 375 of IPC has now been given a new dimension by enlarging the definition of the offence ‘rape’. \footnote{Section 375 of the Criminal Law (Amendment) Act, 2013} Section 376 of IPC has also been made more strict by enhancing punishment as well as including many more such circumstances in which rape can be committed, such as during communal or sectarian violence, women suffering from any mental or physical disability or incapable of giving consent etc. Now, personnel related with armed forces in central or state Governments are also included within the broad ambit of Section 376(2). \footnote{Section 376(2) of the Criminal Law (Amendment) Act, 2013} Again, if any person commits an offence under sub-Section(1) or (2) of Section 376 and in the course of such commission inflicts an injury which causes the death of the women or causes the woman to be in persistent vegetative state, shall be punished with rigorous imprisonment for
a term which shall not be less than twenty years, but which may extend to
imprisonment for life, which shall mean imprisonment for the remainder of
that person’s natural life or death.\textsuperscript{64} Also, the minimum punishment for
sexual intercourse by husband with his own wife, who is living separately
whether under a decree of separation or otherwise, without her consent is
now two years.\textsuperscript{65} An abortion or miscarriage due to natural causes is not an
offence. Sections 312 to 316 of IPC deals with abortion as crime. However,
vViolent and forceful abortion is a crime. Section 313 of IPC deals with
abortion without the consent of the women. The punishment could even be
life imprisonment. Also, although there is no specific law against sexual
harassment at workplace but the guidelines given by our honorable Supreme
Court in the famous case of \textit{Vishaka v. State of Rajasthan}\textsuperscript{66}, is the guiding
force which protects women at their workplace. Articles 325 and 326 of our
Constitution ensures to all its citizens political equality, equal right to
participate in political activities and right to vote respectively.

\textsuperscript{64} Section 376(1) and (2) of the Criminal Law (Amendment) Act, 2013
\textsuperscript{65} Section 376A of Criminal Law (Amendment) Act, 2013
\textsuperscript{66} Vishaka v. State of Rajasthan, AIR 1997 SC 3011.
Political participation may be defined as voluntary participation in political affairs through membership, voting and partaking in the activities of the political parties, legislative bodies and/or politically motivated movements. But still India is a male-dominated society where women are seen as subordinate and inferior to men. Although, Constitution of India officially grants equality to women and also empowers the state to adopt measures of positive discrimination in favour of women, legal protection has a limited effect where patriarchal traditions prevail. Even after a half a century of independence, barring a few exceptions, women have mostly remained outside the domain of power and political authority and also of political participation. The political climate as it exists today continues to be male-centered and women are not treated as a political entity in their own right. The trend is to treat women as decorative pieces. Illiteracy, women’s triple burden, patriarchal values, lack of access and control over income and other resources, restrictions to public spaces, insensitive legal systems and other various social, economic, historical, geographical, political and cultural factors are responsible for women’s minimal participation in political processes. The government of India noting the low participation of women in politics, adopted an affirmative action by providing reservation for
women in its three tiers Panchayat Raj System. The 73rd Constitutional Amendment Act introduced not less than 33 percent reservation for women in the Panchayat Raj institutions in the rural areas. Similarly, the 74th Constitutional Amendment Act introduced similar reservation for women in Nagar Palika and Municipalities in towns and urban areas. Prior to the 73rd and 74th Constitutional amendment, only the state of Karnataka had reservation for women in institutions of local self-governance. Policy of reservation in India is not new. The 81st Constitutional Amendment Bill, popularly known as the Women’s Reservation Bill, was introduced in the Parliament in 1996 as an another step to uplift women. The main feature of the Bill is that as nearly as about one-third of all seats in Lok sabha and State Legislative Assemblies shall be reserved for women. Reservation shall apply in case of seats reserved for Scheduled castes and Scheduled tribes as well. Many political parties spoke in favour of this Bill but till date no such reservation has been given to women in the Lok Sabha and/or Vidhan Sabha elections.
3. 2. Position of Hindu Women under Hindu Personal Law:

The departure of the British in 1947 brought freedom to India and the independent India adopted a very forward looking Constitution as well as a complex legal system. India’s first Prime Minister, Pd. Jawaharlal Nehru worked hard to unify the newly independent India by proposing the reformation and codification of Hindu Personal law. Nehru completed codification and partial reform and at the end, a series of four major pieces of personal law legislations were passed in 1955-56: the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956.

The Hindu Marriage Act came into force on 18th May 1955. It amends and codifies the law relating to marriage among Hindus. Also, considerable modifications and amendments were brought about by the Marriage Laws (Amendment) Act of 1976 in the Hindu Marriage Act, 1955 to make it more effective and women oriented. Unlike Shastric Hindu law, now intercaste marriage between persons of different castes – Brahm, Kshatriya, Vaishya and Sudra or persons professing the Hindu, Buddhist, Jain or Sikh religion is
not prohibited. Monogamy has been made a rule now. Bigamy is made punishable as an offence under IPC. Now, a valid Hindu marriage is considerably simplified. Marriage according to Shastric Hindu law was only a sacrament and was not a contract and therefore, a marriage solemnized during the minority of either party does not render the marriage invalid.

After the Marriage Laws (Amendment) Act of 1976, the age for the bridegroom is twenty-one years and the age for the bride is eighteen years (Section 5(iii) of the Act) and a marriage solemnized in violation of the requirement as to age is although not void but voidable, but its contravention is punishable as an offence under Section 18 of the Act. Unlike Shastric

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68 Section [5 (1)] of The Hindu Marriage Act, 1955 says “neither party has a spouse living at the time of the marriage;”
69 Section 17 of the Hindu Marriage Act, 1955 and Sections 494 and 495 of the Indian Penal Code, 1860.
70 Sections 5 and 7 of the Hindu Marriage Act, 1955.
72 Section 18 of The Hindu Marriage Act, 1955 says that, contravention of the condition relating to age shall lead to simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees or with both.
Hindu Law, marriage is now both a sacrament as well as a contract. Again, divorce was not known to the Shastric Hindu law. But relieves by way of judicial separation, declaration of nullity of marriage and divorce are recognized now.\textsuperscript{73} Also, provision is now made for legitimacy of children of void and voidable marriages\textsuperscript{74} and for maintenance, viz alimony pendente lite, permanent alimony etc.\textsuperscript{75}

A joint Hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. A daughter ceased to be a member of her father’s family on marriage and becomes a member of her husband’s family. No female could be a coparcener under Mitakshara law. A wife who was entitled to maintenance out of her husband’s property and to that extent she got an interest in his property, was not her husband’s coparcener. Again, a mother could not be a coparcener with her sons and a mother-in-law with her daughter-in-law. Even a widow succeeding under the Hindu Women’s Rights to Property Act, 1937 to her husband’s share in a joint family could not be a coparcener.\textsuperscript{76}

\textsuperscript{73} Sections (10-13) of the Hindu Marriage Act, 1955.
\textsuperscript{74} Section 16 of the Hindu Marriage Act, 1955.
\textsuperscript{75} Sections 24 and 25 of the Hindu Marriage Act, 1955.
\textsuperscript{76} Seetha Bai v. Narsimha (1945) Mad 568; Maguni Padhano v. Lakananidhi AIR 1956 Ori 1
A Hindu coparcenary was a much narrower body than the joint family. No female could be a coparcener, although a female could be a member of a joint Hindu family. According to Mitakshara School of Hindu law, a son, grandson and a great grandson constitute a class of coparceners, based on birth in the family. Under this school, a son acquires a right and interest in the family property on his being born in the particular family. Under the Mitakshara system, joint family property devolves by survivorship within the coparcenary. This means that with every birth or death of a male in the family, the share of every other surviving male either gets diminished or enlarged. Thus, interest in undivided coparcenary property is a fluctuating interest.77

The Mitakshara law also recognizes inheritance by succession but only to the property separately owned by an individual, male or female. Females are included as heirs to this kind of property by Mitakshara law. But the law on inheritance by female heirs is not uniform. According to the Bengal, Benares and Mithila sub-schools of Mitakshara law, there are only five females who

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77 Sudarsan v. Narasimbulu (1902) 25 Mad
can succeed as heirs, namely: the widow, daughter, mother, father’s mother and father’s father’s mother. The Madras sub-school recognizes the heritable capacity of a larger number of female heirs that is of the son’s daughter, daughter’s daughter and the sister who are expressly named as heirs in Hindu Law of Inheritance (Amendment) Act, 1929.

The Bombay School which is most liberal to women also recognized a number of more other female heirs like half sister, father’s sister (whether of the whole or half-blood) and women married into the family such as step-mother, son’s widow, brother’s widow, the brother’s son’s widow, the paternal uncle’s widow, the widow of the paternal uncle’s son etc.78

The Dayabhaga School of Hindu law recognized only one mode of devolution of property, namely, succession. It does recognize joint family and joint property but does not recognize the rule of survivorship even in the case of joint family property. Neither sons nor daughters become coparceners at birth nor do they have rights in the family property during their father’s life time. It is a notable feature of the Dayabhaga School that

the daughters also get equal shares along with their brothers. If one of the male heirs dies, his heirs, including females such as his wife and daughters would become members of the joint property, not in their own right but representing him. Since females could be coparceners, they could also act as Kartas, and manage property on behalf of the other members in the Dayabhaga School.

Also, according to the Bengal, Benares, Mithila and Madras Schools, every female who succeeds as an heir, whether to a male or to a female, takes a limited estate in the property inherited by her. In the Bombay State, every female who succeeds as an heir to a female, takes the property absolutely.

As regards to the property inherited from a male, those females who by marriage have entered into the Gotra (family) of the deceased owner, take a limited estate, while other female heirs take absolutely.79

Thus, according to all schools, we see that widow, mother, father’s mother and father’s father’s mother inheriting from a male, takes a limited estate.

79 Gandhi Maganlal v. Bai Jadab (1900) 24 Bom 192, p 214 (FB)
The daughter takes absolutely in the Bombay School but in every other school, she takes a limited estate. The son’s daughter, daughter’s daughter and sister, who are expressly mentioned as heirs in the Hindu law of Inheritance (Amendment) Act, 1929, also takes absolutely in the Bombay School, in every other school, they take a limited estate.

Now come to the concept of ‘stridhan’ which I think needs our due attention as we are discussing about the female’s inheritance rights.

According to Mitakshara School of Hindu law, ‘stridhan’ was,

“That which was given by the father, by the mother, by the husband or by a brother and that which was presented by the maternal uncles and the rest at the time of wedding before the nuptial fire; and a gift on a second marriage or gratuity on account of super session; and as indicated by the word ‘adya’ (and rest) property obtained by, inheritance; purchase; partition; seizure, eg., adverse possession; and finding.”  

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According to Dayabhaga or Bengal School of Hindu law

“That alone is stridhan which she (a woman) has power to give, sell or use independently of her husband’s control.” 81

Thus, all gifts from relations constitute ‘stridhan’ except a gift of immovable property made by the husband and that gifts from strangers also constitute ‘stridhan’, if made before the nuptial fire or at the bridal procession.

But following properties are not ‘stridhan’, namely property inherited by a woman; property obtained by her on partition; gifts from strangers except those made before nuptial fire or at the bridal procession and property acquired by her by mechanical arts. Regarding rights of women over their ‘stridhan’, according to the text of Katyayana and Narada:

➢ during maidenhood, a Hindu female can dispose of her ‘stridhan’ of every description at her pleasure;

➢ during coverture, she can dispose of only that kind of ‘stridhan’ which is called ‘saudayika’, that is gifts from relations except those made by the husband; and

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➢ during widowhood, she can dispose off her ‘stridhan’ of every description at her pleasure including movable property given by the husband, but not immovable property given by him.\(^{82}\)

Thus, under old Hindu Shastric law, a woman occupied a very dependent position in the family and her rights to hold and dispose of property were limited. To provide for equal distribution of property between male and female heirs and also to change the Hindu women’s limited estate into full ownership, the Hindu Women’s Rights to Property Act, 1937 was introduced. This act enabled the widow to succeed along with the son and to take a share equal to that of the son. But the widow did not become a coparcener even though she possessed a right akin to a coparcenary interest in the property and was a member of the joint family. The widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance rights. Although, this Act gave better rights of succession to women but it had its own inherent defects.

The Hindu Succession Act enacted in 1956 was the first law to provide a comprehensive and uniform system of inheritance among Hindus and to address gender inequalities. The Hindu Succession Act, 1956 introduced many reforms in the area of inheritance. Section 14 of the above Act is two fold; firstly, it removes the disability of a female to acquire and hold property as an absolute owner and secondly, it converts the rights of a woman in any estate held by her as a limited owner into an absolute owner. The provision was retrospective as it converts the limited estate into an absolute one even if the property was inherited or held by the woman as a limited owner before the Act came into force. Now, no woman can be denied property rights on the basis of any custom, usage or text. The daughters are also granted property rights in their father’s estate. Under Section 8 of the said Act, now female heirs are granted property rights in the estate of a male Hindu dying intestate (that is, without leaving any testamentary instrument like will, settlement etc). The property shall devolve on his son, daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son; son of a predeceased son of a predeceased son; widow of a predeceased son of a predeceased son.
However, Section 6 of the Act clearly states that in the case of joint family property known as coparcenary property, the interest of a male Hindu on his death would devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the above provision. Coparcenary consists of grandfather, father, son and son’s son. But if the deceased had left himself surviving a female relative like daughter, widow, mother, daughter of a predeceased son, widow of a predeceased son, daughter of a predeceased son of a predeceased son, widow of a predeceased son of a predeceased son, the interest of the deceased in the coparcenary shall devolve by testamentary or intestate succession under this Act and not by survivorship. Under Section 23 of the Hindu Succession Act, 1956, if a Hindu intestate has left surviving him or her both male and female heirs and his or her property includes a dwelling house; wholly occupied by members of his or her family; the right of any such female heir to claim partition of the dwelling house shall not arise until the male heirs choose to divide their respective shares in the said house; but the female heir shall be entitled to a right of residence in the house; provided that where such female heir is a daughter; she shall be entitled to a right of residence in the dwelling house
only if she is unmarried or has been deserted by, or has separated from her husband or is a widow.

To remove the above gender discriminatory provisions of the Hindu Succession Act, 1956, the Hindu Succession (Amendment) Act, 2005 was enacted. Now, in a joint Hindu family the daughter of a coparcener shall,

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu coparcener shall be deemed to include a reference to a daughter of a coparcener.

After the Hindu Succession (Amendment) Act, 2005, after the death of a Hindu, his interest in the joint family property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship. The coparcenary property shall be deemed to have been divided as if a partition had taken place and
(a) the daughter is allotted the same share as is allotted to a son;
(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Also, the provision relating to the right of residence in dwelling houses (Section 23 of the Hindu Succession Act, 1956) has been omitted under the Hindu Succession (Amendment) Act, 2005.

Regarding guardianship of children, there was no well defined old law to that effect. It was the duty of King to protect the property of a minor, until he returned from his teacher’s house or until he passed his minority. There was the institution of joint family, where Karta was the supreme authority and looked after the children and was entitled to the management of the whole coparcenary property including the minor’s interest. The mother was
not entitled to the custody of the undivided interest of her minor son in the joint property. But she was entitled to the custody of his person and of his separate property. Thus, under Shastric Hindu law father was the natural guardian of the person and of the separate property of his minor children and next to him the mother, unless the father has appointed another person as the guardian of the person of his children, by his will. But ironically, the mother was the lawful guardian of her illegitimate children. Women could not, strictly speaking, be appointed guardians, for, under the old rules of Hindu law they were themselves in perpetual tutelage; if married, under their husband or his male descendants or his paternal male kindred; and if unmarried, under their own paternal male kindred.

Then came the Guardians and Wards Act (GAWA), 1890, which was a law to supersede all other laws regarding the same. But the Act was particularly outlined for Muslims, Christians, Parsis and Jews. It applies to all children regardless of race or creed. In fact, the first codified law regarding guardianship among Hindus was the Hindu Minority and Guardianship Act, 1956. The Act does not make any substantial change in the position of women regarding guardianship. But after coming into existence of this Act,
the mother becomes the natural guardian of minor’s person as well as property. But, again the mother comes into picture only after father, that is, the father is the first natural guardian in preference to mother. Normally, when the father is alive he is the natural guardian and it is only after him that the mother becomes the natural guardian.

The only favour this Act has done towards a mother is that, now, unlike old Hindu law, a father cannot bypass her by appointing another guardian for minor’s person or property. In the field of growth and development of “women’s rights jurisprudence” in the post-independence period, the question arises whether the preference given to the father as against the mother is justified in the light of the provisions of Indian Constitution which ordain the state not to discriminate against any citizen on ground of religion, race, caste, sex, place of birth, or any one of them.

The Personal Laws (Amendment) Act, 2010, now amends section 19(b) of the Guardians and Wards Act, 1890 and includes the mother along with the father as a fit person to be appointed as guardian. The Act provides for the

83 Section 6(a) of the Hindu Minority and Guardianship Act, 1956.
mother to be appointed as a guardian along with the father so that the courts do not appoint anyone else in case the father dies.

Adoption laws in our country falls within the arena of personal laws and varies from religion to religion. Adoption is not permitted among Muslims, Christians, Parsis and Jews in India. Persons belonging to these communities who are desirous of adopting a child can take a child only in guardianship under the provisions of GAWA. This Act confers only a guardian-ward relationship to the child unlike the status given to a child born biologically to a family. Once a child under foster care becomes major, he/she is free to break away all his connections.

The adoption under Hindu law is governed by the Hindu Adoptions and Maintenance Act, 1956. The said Act applies only to the Hindus which are defined under Section 2 of the Act and includes any person, who is a Hindu by religion including a Virashiva, a Lingayat or a follower of Brahma, Prathana or Arya Samaj or a Buddhist, Jaina or Sikh by religion, to any other person who is not a Muslim, Christian, Parsi, or Jew by religion. A person who has converted to these religions is also considered Hindu under this Act.
Another Act which deals with the adoption of child by non-Hindu parents is the Juvenile Justice Act of 2000. The enactment of the Juvenile Justice (Care and Protection of Children) Act (JJ Act), 2000 and its subsequent amendment in 2006 is definitely a significant step of our legislature towards recognition of adoption of orphan, abandoned and surrendered children by people irrespective of their religious status. Under Section 41(6) of the JJ Act, 2000, a child can be given in adoption to the following persons:

1-A person irrespective of his/her marital status.

2-The parents to adopt a child of the same sex irrespective of the number of existing biological sons or daughters.

3-The childless couples.

Further, India has also ratified the United Nations Convention on the Rights of the Child on 11th December, 1992. Article 3 of the Convention provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration. All states have undertaken to ensure to children such protection and care as is necessary for their well being and to take all
appropriate legislative and administrative measures. Article 20 of the Convention provides that a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the state. Such care would include foster placement and adoption amongst other alternatives.

Under Indian law, non-resident Indians or foreign nationals are also allowed to adopt a child. They can apply under GAWA and if court deems it fit, he or she is appointed the child’s guardian. The foreign nationals are then allowed to take the child to his or her own country and adopt him or her as per the laws of his or her country. But citizens of countries which do not allow adoption of children born in other countries cannot apply to adopt children in India.

Also, the Juvenile Justice (Care and Protection of Children) Act of 2000, allows foreign nationals to adopt children in India irrespective of their religion. Thus, there is no uniformity as far as adoption laws in India are concerned. Adoption as a legal concept is available only among the members of the Hindu community except where custom permits such
adoption for any other section of the community. Over the years several attempts were made to formulate a general secular law on adoption. Article 44 of Indian Constitution declares that,

“The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”

But all the attempts made by our parliament went in vain due to a number of reasons. It was the Adoption of Children Bill, 1972 which did not see the morning light as Muslim community was in strong opposition. The Adoption of Children Bill, 1980 was drafted then and made applicable to all communities except Muslims, but it was opposed by the Bombay Zoroastrian Jashan community on the demand of exclusion of Parsis from the arena of the proposed Bill. The National Adoption Bill which was although tabled twice in parliament in the seventies has yet to enter our statute books.84

In Indian society, a male spouse enjoyed the position of dominance for centuries together. Under Shastric Hindu law, a wife did not have the right to

question or to object on the absolute right of adoption granted to a male Hindu. A wife could adopt a son to her husband during his lifetime but only with his express consent. After her husband’s death she could adopt a son to him only if he had expressly authorized her to do so. However, in certain parts (Bengal, Benares and Madras) of India, a widow could adopt without such authority.

But in no case a wife or widow could adopt a son to herself and if it was done the adoption was invalid and conferred no legal rights upon the adopted person. A daughter could not be adopted by a male or female Hindu. An unmarried woman could not also adopt a son.

After India became a Sovereign, Democratic Republic, the situation underwent a sea change. The old Hindu law has been codified and attempts were made to make it gender neutral as and in accordance with our Constitutional mandate. The Hindu Adoptions and Maintenance Act, 1956 codifies the law relating to adoption of children. Under Section 7 of the Act, any male Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption. Now, by virtue of the proviso to Section
7 of the Hindu Adoptions and Maintenance Act (HAMA), 1956, the consent of wife has been made a condition precedent in the adoption process by a male Hindu. After this proviso to Section 7, a wife is now able to participate in the decision making process unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind. Under Section 8 of the same Act, a female Hindu who is of a sound mind and has completed the age of eighteen years can also take a son or daughter in adoption to herself and in her own right. Unlike old Hindu law, a daughter can now be adopted and is given the same legal status as that of an adopted son. Also, Section 8 of HAMA empowers a female Hindu who is unmarried or a widow or a divorcee to adopt a son or daughter to herself in her own right, provided she has no Hindu daughter or son’s daughter living at the time of adoption. However, a married woman cannot adopt during the subsistence of her marriage except when the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind. But ironically, if the husband is not under any abovementioned disqualifications the wife cannot adopt even with the consent of her husband, whereas the husband can adopt with
the consent of the wife; adoption of child by a wife in every case must be for her husband (till the passing of the Personal Laws (Amendment) Act, 2010).

Although this Act brings some revolutionary changes in ancient law but there remains a lot to change. Now, women are entitled to give or take in adoption. A daughter is entitled to be adopted. Also, husband have to take consent of his wife before he wants to adopt a child. Again, any female Hindu of sound mind and who has attained age of majority has a right to take a son or daughter in adoption for herself even she is unmarried. This is also a great deviation from the traditional Hindu law which did not permit woman to adopt. Now, a widow could adopt for herself. Also, a woman whose marriage has been dissolved can adopt a child in her own capacity. But under the same Act a married Hindu woman could not adopt a child in her own capacity. The adoption must be for husband (till the passing of the Personal Laws (Amendment Act, 2010).

To provide Indian married woman equal right to adopt a child as that of her male counterpart, clause (c) of Section 8 of HAMA has now been amended. After coming into force of Personal Laws (Amendment) Act, 2010 on 1st
August, a married woman who is of sound mind and major can adopt a child in her own capacity, of course with the consent of her husband. However, this consent is not required if husband has completely and finally renounced the world or has been declared by a court of competent jurisdiction to be of unsound mind or has ceased to be a Hindu. But this Act is an exact photocopy of the original Section 7 of the HAMA except only the word ‘female’ instead of the word ‘male’. Thus, the said Act needs a fair reconsideration so that it can enable itself to fulfill its promises made in its statement of objectives, that is, to become a women centric as well as child centric law.