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NEW ACTS OF
HINDU LAW

1. Hindu Marriage Act
2. Hindu Succession Act
3. Hindu Minority & Guardianship Act
4. Hindu Adoption and Maintenance Act

1974

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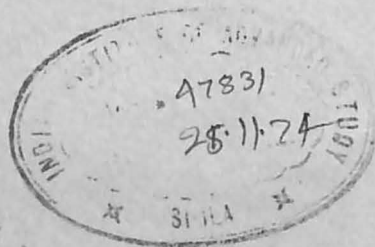
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The Hindu Marriage Act, 1955

(ACT No. 25 OF 1955)

[18th May, 1955]

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DATA ENTERED

An Act to amend and codify the law relating to marriage
among Hindus.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows :—

Preliminary

1. Short title and extent.—(1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Application of Act.—(1) This Act applies—

- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be :

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion ;
- (b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged ; and
- (c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions.—In this Act, unless the context otherwise requires,—

- (a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family :

Provided that the rule is certain and not unreasonable or opposed to public policy ; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family ;

- (b) "district court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act ;
- (c) "full blood" and "half blood"—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives ;
- (d) "uterine blood"—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands :

Explanation.—In clauses (c) and (d), "ancestor" includes the father and "ancestress" the mother ;

- (e) "prescribed" means prescribed by rules made under this Act ;
- (f) (i) "*sapinda* relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation ;
- (ii) two persons are said to be "*sapindas*" of each other if one is a lineal ascendant of the other within the limits of *sapinda* relationship, or if they have a common lineal ascendant who is within the limits of *sapinda* relationship with reference to each of them ;
- (g) "degrees of prohibited relationship"—two persons are said to be within the "degrees of prohibited relationship"—
 - (i) if one is a lineal ascendant of the other ; or
 - (ii) if one was the wife or husband of a lineal ascendant or descendant of the other ; or
 - (iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other ; or
 - (iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters ;

Explanation.—For the purposes of clauses (f) and (g) relationship includes—

- (i) relationship by half or uterine blood as well as by full blood ;
- (ii) illegitimate blood relationship as well as legitimate ;

(iii) relationship by adoption as well as by blood ;
and all terms of relationship in those clauses shall be construed accordingly.

4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,—

- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act ;
- (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

Hindu Marriages

5. Conditions for a Hindu marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely :—

- (i) neither party has a spouse living at the time of the marriage ;
- (ii) neither party is an idiot or a lunatic at the time of the marriage ;
- (iii) the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage ;
- (iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two ;
- (v) the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two ;
- (vi) where the bride has not completed the age of eighteen years, the consent of her guardian in marriage, if any, has been obtained for the marriage.

6. Guardianship in marriage.—(1) Wherever the consent of a guardian in marriage is necessary for a bride under this Act, the persons entitled to give such consent shall be the following in the order specified hereunder, namely :—

- (a) the father ;
- (b) the mother ;
- (c) the paternal grandfather ;
- (d) the paternal grandmother ;
- (e) the brother by full blood ; as between brothers the elder being preferred ;
- (f) the brother by half-blood ; as between brothers by half-blood the elder being preferred ;

Provided that the bride is living with him and is being brought up by him ;

- (g) the paternal uncle by full blood ; as between paternal uncles the elder being preferred ;
- (h) the paternal uncle by half blood ; as between paternal uncles by half-blood the elder being preferred ;

Provided that the bride is living with him and is being brought up by him ;

- (i) the maternal grandfather ;
- (j) the maternal grandmother ;
- (k) the maternal uncle by full blood ; as between maternal uncles the elder being preferred ;

Provided that the bride is living with him and is being brought up by him.

(2) No person shall be entitled to act as a guardian in marriage under the provisions of this section unless such person has himself completed his or her twenty-first year.

(3) Where any person entitled to be the guardian in marriage under the foregoing provisions refuses, or is for any cause unable or unfit, to act as such, the person next in order shall be entitled to be the guardian.

(4) In the absence of any such person as is referred to in sub-section (1), the consent of a guardian shall not be necessary for a marriage under this Act.

(5) Nothing in this Act shall affect the jurisdiction of a court to prohibit by injunction an intended marriage, if in the interests of the bride for whose marriage consent is required, the court thinks it necessary to do so.

7. Ceremonies for Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the *Saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire,) the marriage becomes complete and binding when the seventh step is taken.

8. Registration of Hindu marriages.—(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1) the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall, at all reasonable times, be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

Restitution of Conjugal Rights And Judicial Separation

9. Restitution of conjugal rights.—(1) When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statement made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

(2) Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which shall not be a ground for judicial separation or for nullity of marriage or for divorce.

13. Judicial separation.—(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party—

- (a) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition ; or
- (b) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party ; or
- (c) has for a period of not less than one year immediately preceding the presentation of the petition, been suffering from a virulent form of leprosy ; or
- (d) ¹[has for a period of not less than three years immediately preceding] the presentation of the petition, been suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner ; or
- (e) has been continuously of unsound mind for a period of not less than two years immediately preceding the presentation of the petition ; or
- (f) has, after the solemnization of the marriage, had sexual intercourse with any person other than his or her spouse.

Explanation.—In this section, the expression “desertion” with its grammatical variations, and cognate expressions, means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage.

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

Nullity of Marriage And Divorce

11. Void marriages.—Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by

1. Substituted by the Hindu Marriage (Amendment) Act, 1956 (73 of 1956) S. 2, for “has immediately before.”

either party thereto, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

12. Voidable marriages.—(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely :—

- (a) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding ; or
- (b) that the marriage is in contravention of the condition specified in clause (ii) of section 5 ; or
- (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under section 5, the consent of such guardian was obtained by force or fraud ; or
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage—

- (a) on the ground specified in clause (c) of sub-section (1) shall be entertained if—
 - (i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered ; or
 - (ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered ;
- (b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied—
 - (i) that the petitioner was at the time of the marriage ignorant of the facts alleged ;
 - (ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of marriage ; and
 - (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

13. Divorce.—(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

- (i) is living in adultery ; or
- (ii) has ceased to be a Hindu by conversion to another religion ; or
- (iii) has been incurably of unsound mind for a continuous period of not less than three years, immediately preceding the presentation ; or

- (iv) has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy ; or
- (v) has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form ; or
- (vi) has renounced the world by entering any religious order ; or
- (vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive ; or
- (viii) has not resumed cohabitation for a space of two years or upwards after the passing of a decree for judicial separation against that party ; 1[* * *]
- (ix) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree.

2[(1-A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of two years or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties ; or
- (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they are parties].

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground, -

- (i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner :

Provided that in either case the other wife is alive at the time of the presentation of the petition ; or

- (ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

14. No petition for divorce to be presented within three years of marriage.—(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition three years elapsed since the date of the marriage :

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before three years have elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but, if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of

1. The word "or" omitted by Act 44 of 1964.
2. Inserted by Act 44 of 1964.

the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until the expiry of three years from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said three years upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of three years from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said three years.

15. Divorced persons when may marry again.—When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again :

Provided that it shall not be lawful for the respective parties to marry again unless at the date of such marriage at least one year has elapsed from the date of the decree in the court of the first instance.

16. Legitimacy of children of void and voidable marriages.—Where a decree of nullity is granted in respect of any marriage under section 11 or section 12, any child begotten or conceived before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of having been declared null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity :

Provided that nothing contained in this section shall be construed as conferring upon any child of a marriage which is declared null and void or annulled by a decree of nullity any rights in or to the property of any person other than the parents in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

Notes

This section protects the interests of children *begotten or conceived before the decree is made* in the case of voidable marriages under sections 11 and 12 of the Act.

17. Punishment for bigamy.—Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living ; and the provisions of sections 494 and 495 of the Indian Penal Code shall apply accordingly.

18. Punishment for contravention of certain other conditions for a Hindu Marriage.—Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv), (v) and (vi) of section 5 shall be punishable—

- (a) in the case of a contravention of the condition specified in clause (iii) of section 5, with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both ;
- (b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both ; and

- (c) in the case of a contravention of the condition specified in clause (vi) of section 5, with fine which may extend to one thousand rupees.

Jurisdiction and Procedure

19. Court to which petition should be made.—Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together.

Notes

The provisions of this section are similar to those of section 31 of the Special Marriage Act, 1954.

20. Contents and verification of petitions.—(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded and shall also state that there is no collusion between the petitioner and other party to the marriage.

(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

21. Application of Act 5 of 1908.—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

22. Proceedings may be in camera and may not be printed or published.—(1) A proceeding under this Act shall be conducted *in camera* if either party so desires or if the court so thinks fit to do, and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.

23. Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that—

- (a) any of the grounds for granting relief exists and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and
- (b) where the ground of the petition is the ground specified in clause (1) of sub-section (1) of section 10, or in clause (i) of sub-section (1) of section 13 the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty, and
- (c) the petition is not presented or prosecuted in collusion with the respondent, and
- (d) there has not been any unnecessary or improper delay in instituting the proceeding, and
- (e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case to make every endeavour to bring about a reconciliation between the parties.

Maintenance *pendente lite* and expenses of proceedings.—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant and the conduct of the parties, it may seem to the court to be just; and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1) it may, at the instance of either party vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it shall rescind the order.

26. Custody of children.—In any proceeding under this Act, the court may from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

27. Disposal of property.—In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented at or about the time of marriage, which may belong jointly to both the husband and the wife.

28. Enforcement of, and appeal from, decrees and orders.—All decrees and orders made by the court in any proceeding under this Act shall

be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force :

Provided that there shall be no appeal on the subject of costs only.

Savings and Repeals

29. Savings.—(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or even to have been invalid by reason only of the fact that the parties thereto belonged to the same *gotra* or *pravara* or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954 with respect to marriages between Hindus solemnized under that Act, whether before or after the commencement of this Act.

30. [Repeals.] *Repealed by the Repealing and Amending Act, 1960 (58 of 1960) S. 2 and the First Schedule.*

THE HINDU SUCCESSION ACT, 1956

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— — — —

THE HINDU SUCCESSION ACT, 1956

No. 30 of 1956

(As amended up-to-date).¹

An Act to amend and codify the law relating to intestate succession among Hindus.

[17th June, 1956.]

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows —:

CHAPTER I

Preliminary

1. Short title and extent.—(1) This Act may be called the Hindu Succession Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Application of Act.—(1) This Act applies—

- (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be :—

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion ;
- (b) any child, legitimate, or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged ;
- (c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

1. The Act has been amended in Kerala by Kerala Act 28 of 1958.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions and interpretation.—(1) In this Act, unless the context otherwise requires,—

- (a) "agnate"—one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through male ;
- (b) "aliyasantana law" means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Aliyasantana Act, 1949 or by the customary *aliyasantana* law with respect to the matters for which provision is made in this Act ;
- (c) "cognate"—one person is said to be a "cognate" of another if the two are related by blood or adoption but not wholly through males ;
- (d) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family :

Provided that the rule is certain and not unreasonable or opposed to public policy ; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family ;

- (e) full blood", "half blood" and "uterine blood"—
 - (i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives ;
 - (ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands ;

Explanation.—In this clause "ancestor" includes the father and "ancestress" the mother ;

- (f) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act ;
- (g) "intestate"—a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect ;
- (h) "marumakkattayam law" means the system of law applicable to persons—
 - (a) who, if this Act had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932, the Travancore Nayar Act ; the Travancore Ezhava Act ; the Travancore Nanjinad Vellala Act ; the Travancore Kshatryia Act ; the Travancore Krishnanvaka Marumkathayam Act ; the Cochin Marumkathayam Act ; or the Cochin Nayar Act with respect to the matters for which provision is made in this Act ; or

- (b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras ¹[as it existed immediately before the 1st November, 1956], and who, if this Act had not been passed, would have been governed with respect to the matters for which provision is made in this Act by any system of inheritance in which descent is traced through the female line ;

but does not include the *aliyasantana* law ;

- (i) "nambudri law" means the system of law applicable to persons who, if this Act had not been passed, would have been governed by the Madras Nambudri Act, 1932 ; the Cochin Nambudri Act ; or the Travancore Malayala Brahmin Act with respect to the matters for which provision is made in this Act ;

- (j) "related" means related by legitimate kinship :

Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another ; and any word expressing relationship or denoting a relative shall be construed accordingly.

(2) In this Act, unless the context otherwise requires, words importing the masculine gender shall not be taken to include females.

4. Over-riding effect of Act.—(1) Save as otherwise expressly provided in this Act,—

- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act ;
- (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

CHAPTER II

Intestate Succession

General

5. Act not to apply to certain properties.—This Act shall not apply to—

- (i) any property succession to which is regulated by the Indian Succession Act, 1925, by reason of the provisions contained in section 21 of the Special Marriage Act, 1954 ;

1. Inserted by the Adaptation of Laws (No. 3) Order, 1956.

- (ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act ;
- (iii) the Valiamma Thampuram Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.

6. Devolution of interest in coparcenary property.—When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act :

Provided that if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative, specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

7. Devolution of interest in the property of a tarwad, tavazhi, kutumba kavaru or illom.—(1) When a Hindu to whom the *marumakkattayam* or *nambudri* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a *tarwad*, *tavazhi* or *illom*, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *marumakkattayam* or *nambudri* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *tarwad*, *tavazhi* or *illom* shall be deemed to be the share in the property of the *tarwad*, *tavazhi* or *illom*, as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *tarwad*, *tavazhi* or *illom*, as the case may be, then living, whether he or she was entitled to claim such partition or not under the *marumakkattayam* or *nambudri* law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

(2) When a Hindu to whom the *aliyasantana* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a *kutumba* or *kavaru*, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *aliyasantana* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *kutumba* or *kavaru* shall be deemed to be the share in the property of the *kutumba* or *kavaru*, as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *kutumba* or *kavaru*, as the case may be, then living, whether he or she was entitled to claim such partition or not under the *aliyasantana* law and such share shall be deemed to have been allotted to him or her absolutely.

(3) Notwithstanding anything contained in sub-section (1), when a *sthanamdar* dies after the commencement of this Act, the *sthanam* property held by him shall devolve upon the members of the family to which the *sthanamdar* belonged and the heirs of the *sthanamdar* as if the *sthanam* property had been divided *per capita* immediately before the death of the *sthanamdar* among himself and all the members of his family then living, and the shares falling to the members of his family and the heirs of the *sthanamdar* shall be held by them as their separate property.

Explanation.—For the purpose of this sub-section, the family of a *sthanamdar* shall include every branch of that family, whether divided or undivided, the male members of which would have been entitled by any custom or usage to succeed to the position of *sthanamdar* if this Act had not been passed.

8. General rules of succession in the case of males.—The property of the male Hindu dying intestate shall devolve according to the provisions of this Chapter :—

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule ;
- (b) secondly, if there is no heir of class I, then upon the heirs being the relatives specified in class II of the Schedule ;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased ; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

9. Order of succession among heirs in the Schedule.—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs ; those in the first entry in, class II shall be preferred to those in the second entry ; those in the second entry shall be preferred to those in the third entry ; and so on in succession.

10. Distribution of property among heirs in class I of the Schedule.—The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules :—

Rule 1.—The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2.—The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3.—The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4.—The distribution of the share referred to in Rule 3—

- (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion;
- (ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

11. Distribution of property among heirs in class II of the Schedule.—The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.

12. Order of succession among agnates and cognates.—The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder :—

Rule 1.—Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2.—Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.—Where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.

13. Computation of degrees.—(1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.

14. Property of female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or device, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

15. General rules of succession in the case of female Hindus.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband ;
- (b) secondly, upon the heirs of the husband ;
- (c) thirdly, upon the mother and father ;
- (d) fourthly, upon the heirs of the father ; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
- (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

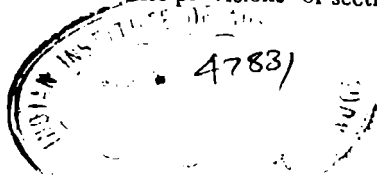
16. Order of succession and manner of distribution among heirs of a female Hindu.—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely :—

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

17. Special provisions respecting persons governed by marumakkattayam and aliyasantana laws.—The provisions of sections 8, 10, 15, and 23 shall



have effect in relation to persons who would have been governed by the *marumakkattayam* law or *aliyasantana* law if this Act had not been passed as if—

(i) for sub-clauses (c) and (d) of section 8, the following had been substituted, namely :—

“(c) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates.”;

(ii) for clauses (a) to (e) of sub-section (1) of section 15 the following had been substituted, namely :—

“(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother ;

(b) secondly, upon the father and the husband ;

(c) thirdly, upon the heirs of the mother ;

(d) fourthly, upon the heirs of the father ; and

(e) lastly, upon the heirs of the husband.” ;

(iii) clause (a) of sub-section (2) of section 15 had been omitted.

(iv) section 23 had been omitted.

General provisions relating to succession

18. Full blood preferred to half blood.—Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

19. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property,—

(a) save as otherwise expressly provided in this Act, *per capita* and not *per stirpes* ; and

(b) as tenants-in-common and not as joint tenants.

Notes

This section lays down that where two or more heirs succeed to the property of an intestate together, they will take it *per capita* and as tenants in common and the share of each will on his death pass to his heirs by succession as distinguished from joint tenants, where the undivided interest of each passes on his death by survivorship.

20. Right of child in womb.—A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

21. Presumption in case of simultaneous deaths.—Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then, for all purposes affecting succession to property it shall be presumed, until the contrary is proved that the younger survived the elder.

22. Preferential right to acquire property in certain cases.—(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of the incidental to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.—In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

23. Special provisions respecting dwelling-houses.—Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, 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 therein; but the female heir shall be entitled to a right of residence therein:

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.

24. Certain widows re-marrying may not inherit as widows.—Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married.

25. Murderer disqualified.—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

26. Convert's descendants disqualified.—Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

27. Succession when heir disqualified.—If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

28. Disease, defect, etc., not to disqualify.—No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.

Escheat

29. Failure of heirs.—If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act,

such property shall devolve on the Government ; and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject.

CHAPTER III

Testamentary Succession

30. Testamentary succession.—[* * *] Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a *Mitakshara* coparcenary property or the interest of a member of a *tarwad*, *tavazhi*, *illom*, *kutumba* or *kavaru* in the property of the *tarwad*, *tavazhi*, *illom*, *kutumba* or *kavaru* shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or her within the meaning of this sub-section.

* * * * *

CHAPTER IV

Repeals

31. [Repeals]. *Repealed by the Repealing and Amending Act, 1960 (58 of 1960), section 2 and First Schedule.*

THE SCHEDULE

(See section 8)

Heirs in class I And class II

Class I

Son ; daughter ; widow ; mother ; son of a predeceased 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 of a predeceased son ; widow of a predeceased son of a predeceased son.

Class II

- I. Father.
- II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.
- III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.
- IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.
- V. Father's father ; father's mother.
- VI. Father's widow ; brother's widow.
- VII. Father's brother ; father's sister.
- VIII. Mother's father ; mother's mother.
- IX. Mother's brother ; mother's sister.

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

**THE
HINDU MINORITY AND GUARDIANSHIP ACT, 1956**

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THE HINDU MINORITY AND GAURDIANSHIP ACT, 1956*

(Act No. 32 of 1956)

An Act to amend and codify certain parts of the law relating to minority and guardianship among Hindus.

Be it enacted by Parliament in the Seventh year of the Republic of India as follows :—

1. Short title and extent.—(1) This Act may be called the Hindu Minority and Guardianship Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Act to be supplemental to Act 8 of 1890—The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided in derogation of, the Guardians and Wards Act, 1890.

3. Application of Act.—(1) This Act applies—

- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj.
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion as the case may be :—

- (i) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion ;
- (ii) any child, legitimate, or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged, and
- (iii) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 36 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

*Received the assent of the President on 25th August, 1956 and published in the Gazette of India, Extraordinary, Part II, Section I, dated August 27, 1956.

(3) The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

4. Definitions.—In this Act—

- (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 of both 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 ;
- (c) "natural guardian" means any of the guardians mentioned in section 6.

5. Overriding effect of Act.—Save as otherwise expressly provided in this Act—

- (a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act,
- (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

6. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (including his or her undivided interest in joint family property), are—

- (a) in the case of a boy or an unmarried girl—the father, and after him, the mother : provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother ;
- (b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father ;
- (c) in the case of a married girl—the husband :

Provided that no person shall be entitled to act as the 'natural guardian' of a minor under the provisions of this section—

- (a) if he has ceased to be a Hindu, or
- (b) if he has completely and finally renounced the world by becoming a hermit (*vanaprasthi*) or an ascetic (*yati* or *sanyasi*).

Explanation.—In this section the expression ‘father’ and ‘mother’ do not include a step-father and a step-mother.

7. Natural guardianship of adopted son.—The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.

8. Powers of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provision of the section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate ; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without previous permission of the court,—

- (a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor, or
- (b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890, shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court 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 within the meaning of section 4-A thereof ;
- (b) the Court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act ; and
- (c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decision of the court.

(6) In this section, “court” means the city civil court or a district court or a court empowered under section 4-A of the Guardians and Wards Act, 1890, within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

9. Testamentary guardians and their powers.—(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person

or in respect of the minor's property (other than the undivided interest referred to in section (12) or in respect of both).

(2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.

(3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section (12) or in respect of both).

(4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may, by will, appoint a guardian, for any of them in respect of the minor's person or in respect of the minor's property or in respect of both.

(5) The guardian so appointed by will has the right to act as the minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

(6) The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

10. Incapacity of minor to act as guardian of property.—A minor shall be incompetent to act as guardian of the property of any minor.

11. De facto guardian not to deal with minor's property.—After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor.

12. Guardian not to be appointed for minor's undivided interest in joint family property.—Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest :

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

13. Welfare of minor to be paramount consideration.—(1) In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

Notes

This section emphasizes that in the appointment of a guardian the paramount consideration will be the welfare of the minor.

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

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The Hindu Adoptions & Maintenance Act, 1956.

(Act No. 78 of 1956)

[21st December, 1956]

An Act to amend and codify the law relating to adoptions and maintenance among Hindus

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows :—

CHAPTER I

Preliminary

1. Short title and extent.—(1) This Act may be called the Hindu Adoptions and Maintenance Act, 1956.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Application of Act.—(1) This Act applies—

(a) to any person, who is a Hindu by religion in any of its forms of developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion,

^a[(bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and]

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu Law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be :—

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion ;

(b) any child, legitimate, or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged ; and

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

1. Received the assent of the President on 21st December, 1956, and published in the Gazette of India, Part, II, Section 1, dated 22nd December, 1956.

2. Inserted by Amendment Act 45 of 1962.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who though not a Hindu by religion, is nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definition.—In this Act, unless the context otherwise requires,—

- (a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family :

Provided that the rule is certain and not unreasonable or opposed to public policy ; and,

Provided further that, in the case of a rule applicable only to a family, it has not been discontinued by the family ;

- (b) "maintenance" includes—

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment ;

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage ;

- (c) "minor" means a person who has not completed his or her age of eighteen years.

4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,—

- (a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act ;

- (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

CHAPTER II

Adoption

5. Adoptions to be regulated by this Chapter.—(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

6. 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 ; and
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

7. Capacity of a male Hindu to take in adoption.—Any male Hindu who is of sound mind and is not a minor has the capacity to 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 or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Explanation.—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.

8. Capacity of a female Hindu to take in adoption.—Any female Hindu—

- (a) who is of sound mind,
- (b) who is not a minor, and
- (c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or 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.

has the capacity to take a son or daughter in adoption.

9. Persons capable of giving in adoption.—(1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provision of sub-section (3), [and sub-section (4)] the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother 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.

(3) The mother may give the child in adoption if the father is dead or 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.

1. Substituted by Amendment Act 45 of 1962.

¹[(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.]

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation.—For the purposes of this section—

(i) the expressions “father” and “mother” do not include an adoptive father and an adoptive mother ;

²[(ia) “guardian” means a person having the care of the person of a child or of both his person and property and includes—

(a) a guardian appointed by the will of the child's father or mother, and

(b) a guardian appointed or declared by a court ; and]

(ii) “court” means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

10. Persons who may be adopted.—No person shall be capable of being taken in adoption unless the following conditions are fulfilled namely:—

(i) he or she is a Hindu ;

(ii) he or she has not already been adopted ;

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption ;

(iv) he or she has not completed the age of fifteen years unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

11. Other conditions for a valid adoption.—In every adoption the following conditions must be complied with :—

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption ;

1. Substituted by Amendment Act 45 of 1962.
2. Inserted by Amendment Act 45 of 1962.

- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or adoption) living at the time of adoption ;
- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twentyone years older than the person to be adopted ;
- (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twentyone years older than the person to be adopted ;
- (v) the same child may not be adopted simultaneously by two or more persons ;
- (vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth¹[or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption :

Provided that the performance of *datta homam* shall not be essential to the validity of an adoption.

12. Effect of adoption.—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 adoption in the adoptive family :

Provided that—

- (a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth ;
- (b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth ;
- (c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

13. Right of adoptive parents to dispose of their properties.—Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will.

14. Determination of adoptive mother in certain cases.—(1) Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.

1. Inserted by Amendment Act 45 of 1962.

(2) Where an adoption has been made with the consent of more than one wife, the seniormost in marriage among them shall be deemed to be the adoptive mother and the others to be step-mothers.

(3) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the step-mother of the adopted child.

(4) Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.

15. Valid adoption not to be cancelled.—No adoption which has been validly made 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.

16. Presumption as to registered documents relating to adoptions.—Where any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

17. Prohibition of certain payments.—(1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorised by the State Government in this behalf.

CHAPTER III

Maintenance

18. Maintenance of wife.—(1) Subject to the provisions of this section a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life-time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance—

- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her ;
- (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her husband that it will be harmful or injurious to live with her husband ;
- (c) if he is suffering from a virulent form of leprosy ;
- (d) if he has any other wife living ;

- (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere ;
- (f) if he has ceased to be a Hindu by conversion to another religion ;
- (g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

19. Maintenance of widowed daughter-in-law.—(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law :

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property, or where she has no property of her own, is unable to obtain maintenance—

- a) from the estate of her husband or her father or mother,
- (b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.

20. Maintenance of children and aged parents.—(1) Subject to the provisions of this section, a Hindu is bound, during his or her life-time, to maintain his or her legitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation.—In this section “parent” includes a childless step-mother.

21. Dependants defined.—For the purposes of this Chapter “dependants” means the following relatives of the deceased :—

- (i) his or her father ;
- ii his or her mother ;
- (iii) his widow, so long as she does not re-marry ;
- (iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor : provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father’s or mother’s estate, and in the case of a great-grandson, from the estate of his father or mother or father’s father or father’s mother ;

- (v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried; provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great grand-daughter from the estate of her father or mother or father's father or father's mother;
- (vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance—
 - (a) from the estate of her husband; or
 - (b) from her son or daughter, if any, or his or her estate; or
 - (c) from her father-in-law or his father or the estate of either of them;
- (vii) any widow of his son or of a son of his predeceased son, so long as she does not re-marry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;
- (viii) his or her minor illegitimate son, so long as he remains a minor;
- (ix) his or her illegitimate daughter, so long as she remains unmarried.

22. Maintenance of dependants.—(1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part of the value of which if the liability to contribute were enforced, becomes less than what would be awarded to him or her by way of maintenance under this Act.

23. Amount of maintenance.—(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the court shall have due regard to the considerations set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;

- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source ;
 - (e) the number of persons entitled to maintenance under this Act.
- (3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to—
- (a) the net value of the estate of the deceased after providing for the payment of his debts ;
 - (b) the provision, if any, made under a will of the deceased in respect of the dependant ;
 - (c) the degree of relationship between the two ;
 - (d) the reasonable wants of the dependant ;
 - (e) the past relations between the dependant and the deceased ;
 - (f) the value of the property of the dependant and any income derived from such property ; or from his or her earnings or from any other source ;
 - (g) the number of the dependants entitled to maintenance under this Act.

24. Claimant to maintenance should be a Hindu.—No person shall be entitled to claim maintenance under this Chapter if he or she has ceased to be a Hindu by conversion to another religion.

25. Amount of maintenance may be altered on change of circumstances.—The amount of maintenance whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

26. Debts to have priority.—Subject to the provisions contained in section 27, debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Act.

Notes

Except where a charge has been created on a deceased's property under S. 27 by his will or by a decree of court or by agreement between himself and one of his dependants or in any other manner as debt payable by the deceased will have priority over the claims of all other dependants for maintenance. The old Hindu Law also had the same rule.

27. Maintenance when to be a charge.—A dependant's claim of maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

28. Effect of transfer of property on right to maintenance.—Where a dependant has right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous ; but not against the transferee for consideration and without notice of the right.

CHAPTER IV

Repeals and Savings

29. Repeals.—[Repealed by the Repealing and Amending Act 58 of 1960].

30. Savings.—Nothing contained in this Act shall affect any adoption made before the commencement of this Act, and the validity and effect of any such adoption shall be determined as if this Act had been passed.

4783)

25.11.74

