

The Hindu Adoptions and Maintenance Act, 1956

Compiled & Edited by:



www.urbanresearch.in

Chapter I – Preliminary

1. Short title and extent.-

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:-

- 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 or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Bramho, Prathana 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, Buddhist, Jainas or Sikhs by religion, as the case may be:-

- a) 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.
- 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;¹[***]

²(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) Any person who is converts 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 unless the Central Government, by notification in the Official Gazette, otherwise directs.

³[(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.]

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

-
1. The word “and” omitted by Act 45 of 1962, sec. 2(a) (w.e.f. 29-11-1962).
 2. Ins. by Act 45 of 1962, sec. 2(b) (w.e.f. 29-11-1962).
 3. Ins. by Act 26 of 1968, sec. 3 and Sch. (w.e.f. 24-5-1968).

3. Definitions.-

In this Act,

a) The expression “custom” and “usage” signify and 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 include-

- 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 an 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. Adoption 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 except by reason of the adoption, nor destroy the rights of any person her birth.

* Date of commencement 21-12-1956.

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.

COMMENTS

Requirements for a valid adoption

- i. Under section 6 the law does not recognize an adoption by a Hindu of any person other than a Hindu; *Kumar Sursen v. State of Bihar*, AIR 2008 Pat 24.
- ii. To prove valid adoption, it would be necessary to bring on records that there had been an actual giving and taking ceremony; *M. Gurudas v. Rasaranjan* , AIR 2006 SC 3275.
- iii. Law is well settled that adoption displaces the natural line of succession and therefore, a person who seeks to displace the natural succession to the property alleging an adoption must prove the factum of adoption and its validity by placing sufficient materials on record; *Suma Bewa v. Kunja Bihari Nayak* , AIR 1998 Ori 29.
- iv. Section 6 does not bar a lunatic person from being adopted; *Devgonda Raygonda Patil v. Shamgonda Raygonda Patil*, AIR 1992 Bom 189.

7. Capacity of 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 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.

COMMENTS

Capacity of female Hindu to adopt

There is conceptual and contextual difference between a divorce woman and one who is leading life like a divorced woman. Both cannot be equated. The appellant because of her physical deformity lived separately from her husband and too for a very long period right from the date of marriage. But in eye of law they continued to be husband and wife, because there was no dissolution of marriage or divorce in the eye of law. Son adopted by appellant invalid; *Brajendra Singh v. State of Madhya Pradesh*, AIR 2008 SC 1056.

Where there is no evidence to show that the female Hindu was seriously ill — mentally or physically, it has been held that she is in a position to adopt; *Devgonda Raygonda Patil v. Shamgonda Raygonda Patil*, AIR 1992 Bom 189.

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 provisions of ¹sub-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.
- 4) ²Where 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 expression “father” and “mother” do not include an adoptive father and an adoptive mother.³

⁴(ia) “guardian” means a person having the care of the person or 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.

- 1. Subs. by Act 45 of 1962, sec. 3(a), for “sub-section (3)” (w.e.f. 29-11-1962).

- 2. Subs. by Act 45 of 1962, sec. 3(b), for sub-section (4) (w.e.f. 29-11-1962).

- 3. The word “and” omitted by Act 45 of 1962, sec. 3(c)(i) (w.e.f. 29-11-1962).

- 4. Ins. by Act 45 of 1962, sec. 3(c)(ii) (w.e.f. 29-11-1962).

10. Persons who may adopted.-

No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:-

- i. He or she is Hindu,

- ii. He or she 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.

COMMENTS

Capacity to adopt

- i. Adoption of boy more than 15 years of age and married is not illegal on account of non-compliance of section 10(iii) and 10(iv) of the Act provided such custom or usages is prevalent

in a community; Hanmant Laxman Salunke (D) by L.Rs. v. Shrirang Narayan Kanse, AIR 2006 Bom 123.

- ii. The plaintiff being married and above 30 years of age could not prove any custom or usage being observed openly, continuously and uniformly thereby gaining the force of law in his Digamber Jain community which could validate his adoption; Nemichand Shantilal Patni v. Basantabai, AIR 1994 Bom 235.

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.
- 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 by 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 twenty-one years older than the person to be adopted.
- iv. The same child may not be adopted simultaneously by two or more persons.
- v. 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 or its both (or in the case of an abandoned child or 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 hormam shall not be essential to the validity of adoption.

COMMENTS

Conditions for adoption

- i. Provision of section 11 requiring age difference between adoptive mother and adoptive son to be at least 21 years is mandatory in nature. Word 'must' cannot be read as 'May'. This breach is

fatal to adoption; Hanmant Laxman Salunke (D) by L.Rs. v. Shrirang Narayan Kanse, AIR 2006 Bom 123.

- ii. The defendant's father only wanted that he should be reared up by Sankar and Sasi after the mother's death and there had been no formal ceremony of adoption nor were Sankar and Sasi unfit to have children of their own, thereby negating the adoption; Urmila Devi v. Hemanta Kumar Mohanta, AIR 1993 Ori 213.
- iii. The age of the plaintiff was 30 years and that of the adoptive mother 48 years six months, thereby contravening the provisions of section 11(iv) as the difference between the plaintiff and mother was only 19 years and not 21 years; Nemichand Shantilal Patni v. Basantabai, AIR 1994 Bom 235.
- iv. There was no evidence in hand that the plaintiff was actually given and taken in adoption by the parents or guardians of the plaintiff as required under section 11(vi). Adoption was held not to have taken place; Nemichand Shantilal Patni v. Basantabai, AIR 1994 Bom 235.

Deed of adoption

Neither any deed of gift and acceptance executed and registered nor deed of acknowledgment acknowledging adoption is sufficient by itself to constitute legal adoption in the absence of actual giving or taking. It is not a substitute for actual giving or taking. Omission of day or date of adoption in a deed of acknowledgement is very vital, Such a deed loses all its significance; Raghunath Behera v. Balaram Behera, AIR 1996 Ori 38.

Subsequent events

Subsequent marriage of the adoptive mother cannot invalidate the adoption; Narinderjit Kaur v. Union of India, AIR 1997 P&H 280.

-
1. Ins. by Act 45 of 1962, sec. 4 (w.e.f. 29-11-1962).

12. Effects 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.

COMMENTS

Effect of adoption

On adoption, adoptee gets transplanted in adopting family with the same rights as that of natural-born son. Adopted child becomes coparcener in Joint Hindu Family property after severing all his ties with natural family; *Basavarajappa v. Gurubasamma*, (2005) 12 SCC 290.

Right in property after adoption

An adoptee can take only that property to his adoptive family from his birth family which is already vested in the adoptee prior to adoption by inheritance or by partition in the natural family or as sole surviving coparcener as he becomes its absolute owner. Clause (b) of the proviso to section 12 cannot be attracted when the property has not been vested in him and is still a fluctuating coparcener property; *Devgonda Raygonda Patil v. Shamgonda Raygonda Patil*, AIR 1992 Bom 189.

Vested property

“Vested property” in the context of clause (b) of the proviso to section 12 means property in which indefeasible right is created, i.e., on no contingency it can be defeated in respect of particular property; *Devgonda Raygonda Patil v. Shamgonda Raygonda Patil*, AIR 1992 Bom 189.

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 Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.
- 2) Where an adoption has been made with the consent of more than one wife, the senior most 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 be 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 adoption.-

Whenever 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.

State Amendment

Uttar Pradesh

Section 16 renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section (2) shall be inserted, namely:—

“(2) In case of an adoption made on or after the 1st day of January, 1977 no court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of the child in adoption, except a document recording an adoption, made and signed by the person giving and the person taking the child in adoption, and registered under any law for the time being in force:

Provided that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872.”

[Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976 (U.P. Act 57 of 1976), sec. 35 (w.e.f. 1-1-1977).]

COMMENTS

Burden of proof

- i. Whenever 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. The proof of giving and taking of child is not necessary; *Pathivada Rama Swami v. Karoda Surya Prakasa Rao*, AIR 1993 AP 336.
- ii. If the adoption is disputed, it is for the plaintiff to prove that ceremony of giving and taking has not taken place; *Devgonda Raygonda Patil v. Shamgonda Raygonda Patil*, AIR 1992 Bom 189.

Registered Documents

The petitioner is lawfully adopted by a Hindu lady and the Deed of adoption is registered and therefore the presumption as per the provisions of section 16 of the Act, can be drawn in favour of the petitioner. The said presumption would operate so long as there is not rebuttal by the procedure known to law; *N.R. Trivedi v. District Education Officer, Anand* , AIR 2004 Guj 53.

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 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 authorized by the State Government in this behalf.

COMMENTS

Prohibition of payment or reward in consideration of adoption

Section 17 of the Act has been enacted by the legislature with a view to prevent trafficking of children. Where a major had agreed, after receiving considerable properties from the family into which he was to be taken in adoption, not to set up any claims with regard to certain items of the property belonging to the adopting family, the defendant could not be said to be a recipient of any payment or reward in consideration of adoption, of the plaintiff thereby not attracting section 17 of the Act; Jupudi Venkata Vijaya Bhaskar v. Jupudi Kesava Rao, AIR 1994 AP 134.

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 willfully neglecting her.
 - b) If he has treated her with such cruelty as to cause a reasonable apprehension in her mind 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 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.

COMMENTS

Interim maintenance

The right to claim interim maintenance in a suit is a substantive right under section 18 of the Act. Since no form is prescribed to enforce the said right civil court in exercise of its inherent power can grant interim maintenance; Purusottam Mahakud v. Smt. Annapurna Mahakud , AIR 1997 Ori 73.

Maintenance pendente lite

After considering the status of the husband the wife should be awarded maintenance pendente lite, even though there is no separate provision in the Act for grant of maintenance pendente lite. The obligation to maintain the wife remains on the husband even though the wife might be living separately. The suit under section 18 of the Act may take decades to decide, the wife in the first instance be forced to face starvation and then subsequently is granted maintenance from the date of filing of suit. Such a view will be against the very intent and spirit of section 18 of the Act. It is settled law that a court empowered to grant a substantive relief is competent to award it on interim basis as well, even though there is no express provision in the statute to grant it; Neelam Malhotra v. Rajinder Malhotra, AIR 1994 Del 234.

Maintenance to wife/widow

Widow has no charge on separate property of husband. Neither section 18 relating to maintenance of wife nor section 21 dealing with widow provides for any charge for maintenance on separate property of husband; Sadhu Singh v. Gurdwara Sahib Narike , AIR 2006 SC 3282.

Separate residence and maintenance

- i. The wife had been living alone and all the children had been brought up by her without any assistance and help from the husband and there was a clear case of desertion, the wife was entitled to separate residence and maintenance; Meera Nireshwalia v. Sukumar Nireshwalia, AIR 1994 Mad 168.
- ii. The thoughtless action of the husband of evicting the wife from the house where she had been living in collusion with the purchasers of the house and the police inflicted a deep wound on her amounting to cruelty, the wife was entitled to live separately and claim maintenance; Meera Nireshwalia v. Sukumar Nireshwalia, AIR 1994 Mad 168.
- iii. The claim for maintenance by a wife can also be sustained under clause (g) even on a ground covered by one or other clauses i.e. clause (a) to (f) of section 18(2) substantially but not fully.

Merely because the wife fails to strictly prove the specific grounds urged by her, she cannot be denied relief; *Meera Nireshwalia v. Sukumar Nireshwalia*, AIR 1994 Mad 168.

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, or
 - 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 lifetime, to maintain his or her legitimate or illegitimate 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. Dependents 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 grand-son, from the estate of his father or mother or 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 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 remarry: 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, the value of which is, or would, if the liability to contribute were enforced, become 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 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 award 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 claimants.
 - e) The number of persons entitled to maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to –
- 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 provisions, 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 dependants.
 - 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 dependants entitled to maintenance under this Act.

Comments

Quantum of maintenance

The amount payable by way of maintenance depends on the facts of each case and as such, no exception could be taken to the amount fixed by the trial Court as well as the date from which the maintenance could be claimed; *Vasantha v. Chandren*, AIR 2002 Mad 214.

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 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.

27. Maintenance when to be a charge.-

A dependant's claim for 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 a 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.-

(Rep. By the Repealing and Amending Act, 1960 (58 of 1960), sec. 2 and Sch.1).

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 not been passed.

* Date of commencement 21-12-1956.