

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

(Act 78 of 1956, dt. 21-12-1956)¹

*[As amended by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019),
dt. 9-8-2019, w.e.f. 31-10-2019 vide SO 2889(E), dt. 9-8-2019 and
the Personal Laws (Amdt.) Act, 2019 (6 of 2019), dt. 21-2-2019, w.e.f. 1-3-2019]*

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 ²[xxx].

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 the 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; ³[x x x]
- ⁴[(b) 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 convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

¹ Act has been extended to Dadra and Nagar Haveli by Regulation 6 of 1963.

² Words “except the State of Jammu and Kashmir” omitted by the Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019), dt. 9-8-2019, w.e.f. 31-10-2019 vide SO 2889(E), dt. 9-8-2019.

³ Word “and” omitted by Act 45 of 1962, w.e.f. 29-11-1962.

⁴ Inserted by Act 45 of 1962, w.e.f. 29-11-1962.

(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.

¹[(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, 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 : 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 incidents to her marriage;
- (c) "minor" means a person who has not completed his or her age of eighteen years.

COMMENTS

Where the custom is such as permitting the second marriage during the lifetime of the spouse cannot be given the force of law keeping in mind the statutory provisions against bigamy.—*Raghuvira Kumar v. Shankmukha Vadivu* 1970 (2) MLJ 193

As per the custom prevailing in Himachal Pradesh, daughter is conferred a right where for she can make a representation in non-ancestral property including the property of a collateral.—*Ram Rakha v. Ram Rakshi* 1983 HP 18

A custom is a particular rule which has existed either actually or presumptively from time immemorial, and has obtained the force of law in a particular locality, although contrary to or not consistent with the general common law of the realm. A custom to be held valid must have four essential attributes. First, it must be immemorial; secondly, it must be reasonable; thirdly, it must have continued without interruption since its immemorial origin; and fourthly, it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the person whom it is alleged to affect.—*Halsbury's law of England* 4th ed. vol. 12 para 401

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;

¹ Inserted by Act 26 of 1968, w.e.f. 24-5-1968.

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

COMMENTS

Where the adoption takes place following the custom, then the custom must be such as not in contradiction of statutory provisions laid down as regards adoption. That adoption which is against the provisions of the Act is invalid.—*Kartar Singh v. Surjan Singh* 1975 (1) SCR 742

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 except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

COMMENTS

Section 5 of the Act provides that after the commencement of this Act, no adoption shall be made by or to a Hindu except in accordance with provisions contained in Chapter II of the Act and any adoption made in contravention of the said provisions shall be void. An adoption which is void shall neither create any right in the adoptive family in favour of any person which he could not have acquired except by reason of the adoption, nor destroy the right of such person in the family of his birth.—*Ashish Kumar Srivastava v. Western Coalfields Ltd.* 2011 (101) AIC 359 (MP H.C.)

Adoption that takes place after the death of the husband contrary to the will of deceased husband and after the Act came into force it was held that, legality of the adoption is to be considered in accordance with the provisions of the Act, and the adoption cannot be held invalid just for the fact that it was against the directions as mentioned in the will of deceased husband.—*Kavuluru v. Kuntamukkala* 1971 (1) An. WR 134

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

Where any of the requirements as laid down under s. 6 are not strictly observed, that non-observance of the requisite or requisites is enough to convert the adoption as invalid one.—*Dhanraj v. Suraj Bai* 1972 Raj LW 612

Doctrine of "factum valet" does not have its application in case the adoption is against what is said by the provisions of the Hindu Adoptions and Maintenance Act, 1956.—*Lalla Ram v. Gohri Ram* 1972 All WR (HC) 612

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.

COMMENTS

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 proviso in which it is provided that the consent of the second wife is not necessary if she 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.—*Sarabjeet Kaur v. Gurmeet Kaur 2009 (76) AIC 926 (P&H H.C.)*

The 1956 Act now provides for adoption of boys as well as girls. By virtue of the proviso to section 7, the consent of wife has been made a condition precedent for adoption by a male Hindu.

The mandatory requirement of the wife's consent enables her to participate in the decision-making process which vitally affects the family. If the wife finds that the choice of the person to be adopted by the husband is not appropriate or is not in the interest of the family, then she can veto his discretion.

A female Hindu who is of a sound mind and has completed the age of eighteen years can also take a son or daughter in adoption to herself and in her own right.

This is clear from section 7 of the Act. Proviso thereof makes it clear that a male Hindu cannot adopt except with the consent of the 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 Jurisdiction to be of unsound mind.—*Ghisalal v. Dhapubai (D) By L.Rs. 2011 (100) AIC 169 (S.C.)*

The person taking in adoption must not suffer from idiocy or insanity; he must have the capacity enough to understand the nature of the Act and what would be the legal effects of adoption. Simultaneously it is not the requirement the person concerned must be possessed with a very high degree of intelligence. There is a very strong presumption favouring soundness of mind.—*Babubarelal v. Gulzari Devi 1979 All LJ 1333*

Deaf and dumb but possessed with the capacity to express through signs and gestures, though not clearly, is to be taken as a person of sound mind.—*Ambrish Kumar v. Hatu Prasad 1981 HLR 781*

Proviso places a restriction as concerned to right to take in adoption that makes the consent of the wife a necessity so as to make the adoption valid. The consent must be obtained prior to the civil adoption takes place and not later on where the proviso is disregarded adoption is not valid.—*Badrilal v. Bheru 1986 (1) HLR 81*

In the case of divorce the consent is not necessary but in the case of judicial separation, consent would be necessary. In case of two wives, consent must be of both the wives despite the fact that one of them was not living under the same roof for a big job of twenty or thirty years.—*Bhooloo Ram v. Ram Lal 1989 (2) HLR 162*

¹**[8. Capacity of a female Hindu to take in adoption**

Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption:

PROVIDED that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

COMMENTS

Section 8 provides that a Hindu female whose husband is dead can adopt son or daughter in adoption.—*Ashish Kumar Srivastava v. Western Coalfields Ltd. 2011 (101) AIC 359 (MP H.C.)*

After the completion of the age of eighteen, a woman gets the capacity to adopt even though she herself is unmarried. Where after the adoption, she is married, her husband would be the step-father and she herself would remain adoptive mother as earlier. Adoption by an unmarried can also take place despite the fact that she is having an illegitimate child.—*Ashoka Naidu v. Raymond AIR 1976 Cal 272*

A married woman has got no right to take in adoption during the subsistence of the marriage. But where the husband has completely and finally renounced the world or he had ceased to be a Hindu or some competent court has declared him to be of unsound mind, the wife can adopt.—*Dashrath v. Pandu 1977 Mah LJ 358*

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[(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption :

PROVIDED that such right shall not be exercised by either of them save with the consent of the other unless one of them 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[(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[(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 is not known, the guardian of the child may give the

1 Substituted by Act 30 of 2010, dt. 31-8-2010, w.e.f. 31-8-2010. Prior to substitution, section 8 read as under:—

"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."

2 Substituted by Act 30 of 2010, w.e.f. 31-8-2010. Prior to substitution, sub-section (2) read as under:—

"(2) Subject to the provisions 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 Italicised sub-section (3) omitted by Act 30 of 2010, w.e.f. 31-8-2010.

4 Substituted by Act 45 of 1962, w.e.f. 29-11-1962.

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; ¹[x x x]
- 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.

COMMENTS

Section 9(2) of the Act provides that father has right to give in adoption but such right shall not be exercised save with the consent of the mother.—*Ashish Kumar Srivastava v. Western Coalfields Ltd. 2011 (101) AIC 359 (MP H.C.)*

Where the adoption takes place and a step-son is given in adoption by step-mother having no capacity to give in adoption such an adoption is not valid one by virtue of s. 5(1) read with s. 6(ii)—*Dhanraj v. Suraj Bai 1975 (Supp) SCR 73*

It is the District Court where in the application for giving and taking in adoption has to be moved and not in the Family Court. How and in what manner the permission is to be made there is no such mention under the Act and the provisions that have to be followed are there as laid down under Guardians and Wards Act.—*Central Bank Relief & Welfare Society, In re. AIR 1991 Kar 6*

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.

¹ Word “and” omitted by Act 45 of 1962, w.e.f. 29-11-1962.

² Inserted by Act 45 of 1962, w.e.f. 29-11-1962.

COMMENTS

Clause (iv) of section 10 provides that a person to be adopted, should not have completed the age of 15 years.—*Atluri Brahmanandam (D) through L.Rs. v. Anne Sai Bapuji* 2010 (96) AIC 9 (S.C.)

There is a bar imposed by this s. 10 and that being a married person cannot be adopted. But the case is different where there is some custom as the custom among Jats of Punjab and Haryana in having a legal sanction and judicially recognised where under the custom permits the adoption of married person.—*Amar Singh v. Tej Ram* 1982 (84) Punj LR 2387

The person above the age of 15 years can't be given in adoption and if there is some custom permitting that the same must be strictly pleaded and proved.—*Mahalingam v. Kannayyar* AIR 1990 Mad. 333 : 1989 (2) MLJ 3441

Existence of custom be it family or tribal custom having its applicability to the parties concerned whereby the adoption of a person married or of the age of more than 15 years is permitted, is all that is required to be established by the provisions of section 10 so as to make the adoption valid.—*Maya Ram v. Jai Narain* 1989 (1) HLR 352

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) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one 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 adoption.

COMMENTS

If the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, sons or sons son (whether by legitimate blood relationship or by adoption) living at the time of the adoption.—*Ashish Kumar Srivastava v. Western Coalfields Ltd.* 2011 (101) AIC 359 (MP H.C.)

¹ Inserted by Act 45 of 1962, w.e.f. 29-11-1962.

Requirement of an age gap of 21 years between the adoptee and the adopted, if violated, is sufficient to render the adoption invalid.—*Golak Chandra v. Kritibas AIR 1979 Ori. 205*

Where the case is, one child is given to the family of other so that the child is brought up, this giving of the child does not constitute adoption. There must be an intention to give and to take the child in adoption.—*Bakshish Singh v. Kewal Singh 1975 (77) Punj LR 321*

Absence of parents at the time of adoption ceremony and not proving the giving and taking the child in adoption, adoption was held invalid.—*Kewal Singh v. Bakshish Singh 1979 HLR 431*

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

The assumption that all the ties of child with the family of his or her birth shall be severed operates only from the day the adoption takes place and from that day the ties are replaced by those created by the adoption in the adoptive family.—*Kanwaljit Singh v. State of Haryana 1981 Pun LJ 64*

Adopted girl is conferred an entitlement to succeed the property within the meaning of s. 8 of Hindu Succession Act despite the fact that the property was owned by the deceased by reason of his adoption.—*Neelawwa v. Shivawwa 1988 (2) HLR 799*

Under the provisions of s. 14 of the Hindu Succession Act, widow becomes an absolute owner, and it is not possible that the child adopted by her is divesting her of the right which has already been vested in her.—*Dinaji v. Dadde AIR 1990 SC 1153*

Where the property is in absolute terms vested in a person as the last surviving coparcener a child subsequently adopted cannot divest him of it.—*Krishnabai v. Ananda Sevaram AIR 1981 Bom 240*

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.

COMMENTS

Where the child is taken in adoption by the sole surviving widow, oral relinquishment by her in favour of adopted child is valid and effective.—*Hirabai v. Babu Manika AIR 1980 Bom. 315*

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.

(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 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 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***

In this State, existing section 16 re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, inserted sub-section (2), namely:—

“(2) In case of an adoption made on or after the first 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.”

[Vide U.P. Civil Laws (Reforms and Amdt.) Act, 1976 (UP Act 57 of 1976), w.e.f. 1-1-1977]

COMMENTS

The adoption deed was duly registered and held that in view of section 16 of the 1956 Act, a presumption can be raised that the adoption had been made after complying with the relevant provisions.—*Ghisalal v. Dhapubai (D) By L.Rs. 2011 (100) AIC 169 (S.C.)*

It can safely be said that for drawing the presumption under section 16 the adoption deed must be made and signed by both the parties. It should be bilateral document.—*Sukho @ Phoowati (Died) by L.Rs. v. Bijender 2010 (93) AIC 499 (P&H H.C.)*

In case a challenge is thrown to the deed of adoption on the ground of its execution being by fraud, coercion or undue influence, it is for the party challenging the document that has to establish that the execution was so vitiated.—*Sushil Chandra v. Bhoop Kunwar AIR 1977 All 441*

Presumption as to registered documents relating to adoption is only a rebuttable presumption.—*Bhooloo Ram v. Ramlal 1989 (2) HLR 162*

Where the validity of the adoption was asked for on the ground of not obtaining the consent of the husband on account of his unsound mind but this fact found no place in the plaint as required by order 6, rule 6, CPC and there was only the presentation of registered document it was held that presumption as under s. 16 of Hindu Adoption and Maintenance Act would prevail over the provision of order 6, rule 6 of C.P.C. It is for the other party if it wants to, to rebut the presumption.—1979 MP LJ 591

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 lifetime.

(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 mind that it will be harmful or injurious to live with her husband;
- ¹[(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.

COMMENTS

In *Abbayolla M. Subba Reddy v. Padmamma AIR 1999 AP 19 (FB)*, the Andhra Pradesh High Court held that a Hindu woman married with Hindu male having legally wedded wife is not entitled to maintenance under section 18 of the Act. In *Khullar v. Vijay Khullar AIR 2002 Delhi 373*, the Delhi High Court held that marriage solemnised during subsistence of first marriage is hit by section 5 of the Act. In *Yamunabai Anantrao Adhav v. Anandrao Shivram Adhav AIR 1988 SC 644*,

¹ Existing clause (c) omitted by the Personal Laws (Amdt.) Act, 2019 (6 of 2019), dt. 21-2-2019, w.e.f. 1-3-2019 vide SO 1061(E), dt. 28-2-2019.

the Apex Court held that marriage by Hindu with person having living spouse is null and void. In this case High Court held that only the lawful wife or legally wedded wife is entitled for maintenance under section 18 of the Act. The words Hindu wife used in section 18 of the Act only include lawful wife or legally wedded wife and does not include any wife of second marriage during subsistence of her first marriage.—*Megh Prasad v. Bhagwantin Bai* 2009 (80) AIR 688 (Chhattisgarh H.C.)

Section 18 of the Act confers a right on a wife to be maintained by her husband during her life time. According to Mulla (Hindu Law), the right of a wife for maintenance is an incident of the status or estate of matrimony and a Hindu is under a legal obligation to maintain his wife.—*B.P. Achala Anand v. S. Appi Reddy* AIR 2005 SC 986

The words “wife or widow” in the context of marriage, succession or maintenance enactments are of restrictive legal character and imply relationship which is not recognised by law.—*Rajesh Bai v. Santha Bai* 1982 HLR 445

A man marrying a second time, during the lifetime of his first wife, second wife though, having no knowledge of the first marriage, is not entitled to claim maintenance under s. 125 of the Code of Criminal Procedure, as she was not legally wedded wife and for that the marriage was void.—*Jamuna Bai v. Anant Rao* 1988 Cr LJ 793

There is no forum provided under the Act so as to claim maintenance. Maintenance can only be claimed through regular suit.—*Krishan Lal v. Sudershan Kumari* 1979 HLR 576

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.

COMMENTS

If the widowed daughter-in-law is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, and is unable to obtain maintenance from the estate of her husband or her father or mother or from her son or daughter, shall be maintained by her father-in-law from any coparcenary property in his possession out of which daughter-in-law has not obtained any share, till she remarries.—*Dyali v. Smt. Anju Bai* 2011 (99) AIC 395 (Chhattisgarh H.C.)

Liability of the father-in-law comes to an end where the widow is remarried or she has obtained a share in the coparcenary properties while partition. But her right to share in the separate property of her husband or in his interest in coparcenary property cannot be divested.—*Animuthu v. Gandhimal* 1977 HLR 628

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.