

## Hindu Adoptions And Maintenance Act, 1956

[78 of 1956, dt. 21-12-1956]

*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 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 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 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, and 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; <sup>[2]</sup>[\*\*]
  - <sup>[3]</sup>[(bb) any child, legitimate or illegitimate who has been abandoned both by his father and mother or whose parentage is 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.
- (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 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 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 provision 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 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 of 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 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 provision of the Act is invalid.- *Kartar Singh v. Surjan Singh* 1975 (1) SCR 742

#### CHAPTER II ADOPTIONS

##### 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 provision 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 right of any person in the family of his or her birth.

#### COMMENTS

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 provision of 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 Adoption 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 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 the them is unnecessary for any of the reasons specified in the preceding proviso.

### COMMENTS

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*

## 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.

**COMMENTS**

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 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 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 the guardian of a child shall have the capacity to give the child in adoption.
- (2) Subject to the provision of <sup>1</sup>[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 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.

<sup>1</sup>[(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 expression "father" and "mother" do not include an adoptive father and an adoptive mother; <sup>2</sup>[\*\*\*]

- <sup>3</sup>[(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

Where the adoption takes place and 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 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.

## COMMENTS

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 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 cannot 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 provision of section 10 so as to make adoption valid.-*Maya Ram v. Jai Narian 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 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 person;
- (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 birth <sup>1</sup>[or in 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 homam shall not be essential to the validity of adoption.

## COMMENTS

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.-*Kewal Singh v. Bakshish 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. *v. Bakshish Singh -Kewal 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 the 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 other 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 step mother of 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 adoptive 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.

**COMMENTS**

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 relation to adoption is only a rebuttable presumption.-Bhoolo Ram v. Ramlal 1989 (2) HLR 162

Where the validity of the adoption was asked for on the ground of not obtaining the consent if 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 provision 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 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 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

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

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. Gandhimmal 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.
- (3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends insofar 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 his section "parent" includes a childless step-mother.

### COMMENTS

There is no liability casted upon step-son as to maintain his step mother under this section, though the step-son is liable to maintain her as a dependent- Pannalal v. Fulmani AIR 1987 Cal 768

Unmarried daughter, aged or infirm parents can enforce their rights only in these cases where they are unable to maintain themselves from their own earnings or from the property owned by them where almost all the property is given in gift by the mother to her only daughter and the rest of property is sold by her to her brother, she gets entitled to be maintained by her daughter.-Munnidevi.v. Chhoti AIR 1983 All 444.

## 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 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'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 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 dependents

- (1) Subject to the provisions of sub section (2) the heirs of a deceased Hindu are bound of 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.

### COMMENTS

A person having concubine and he himself dying after the Act coming into force, would confer a right to maintenance upon the concubine.-Laxminarasamma v. Sundaraamma AIR 1981 AP 88.

Where no property is inherited by the brothers from their father, they cannot be compelled to contribute for the marriage of their sister.-Challaiyan v. Salia Krishan AIR 1982 Mad 148.

Where there is no maintenance from the estate of the husband or from her son or daughter such Hindu widow, is to be taken as dependant of the father-in-law under this section as s,19 would not be having its application to such a case .-Bitala Kunwari v. Girand Singh AIR 1983 All 425.

### 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 sources;
  - (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 dependent 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 dependants entitled to maintenance under this Act.

#### COMMENTS

Quantum of maintenance depends upon a gathering together of all the facts of the situation, the amount of free estate, the past life of the married parties and the families a survey of the conditions and necessities and rights of the members, on a reasonable view of the change of circumstances possibly required in the future, regard being of course to the scale and mode of living to the age, habits, wants and class of life of the parties.-Rashmi Mehra v.Sunil Mehra AIR 1991 Del.44

#### 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.

#### COMMENTS

When the power is conferred to alter the prior decree or agreement it definitely includes a power to annul the same if the circumstances requires so.- Dattu Bhat v. Tarabai AIR 1985 Bom.106

#### 26 Debts to have priority

Subject to the provision 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 its 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.

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<sup>[1]</sup> Act has been extended to Dadra and Nagar Haveli by Regulation 6 of 1963

<sup>[2]</sup> Word “and” omitted by the Act 45 of 1962

<sup>[3]</sup> Inserted by Act 45 of 1962

<sup>1</sup> Substituted by Act 45 of 1962, w.e.f. 29-11-1962

<sup>1</sup> Substituted by Act 45 of 1962, w.e.f. 29-11-1962

<sup>2</sup> Word “and” omitted by Act 45 of 1962, w.e.f. 29-11-1962

<sup>3</sup> Inserted by Act 45 of 1962

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