

HINDU DISPOSITION OF PROPERTY ACT, 1916

15 of 1916

[28th September, 1916]

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STATEMENT OF OBJECTS AND REASONS "The object of the present Bill is to enable Hindus and Mussalmans to dispose of property by transfer inter vivos and by will for the benefit of unborn persons within certain limits. According to the Hindu Law as now administered in British India, a gift in favour of a person not in existence at the date of the gift is void : and so also a bequest in favour of a person not in existence at the time of the testator's death. The same is the rule of Mahomedan Law. except that, under the provisions of Musslamans Wakf Validating Act, 1913. it is competent to a Mahomedan to settle property for the benefit of unborn persons even in perpetuity, provided the ultimate disposition is for the benefit of charity. Every lawyer familiar with the Indian Courts must have come across a large number of settlements and wills made by Hindus and Muhammandans for the benefit of their children and grand-children. The paramount object of the settlor in all these cases has been to provide not only for his children and grand-children then in existence, but also for those to be born hereafter, instead, however, of giving effect to the settlor's intention, the law as now administered completely defeats it. Even where a donor has only one child in existence at the date of the gift, and the gift is made in express terms for the benefit of all his children including those to be born hereafter, the law excludes from

the benefit of the gift all children born subsequently to the date of the gift. to the entire subversion of the donor's intention. Similarly, the intention of testators to benefit by their wills their children and grand-children not in existence at the death of the testators is also defeated. It is to remedy these evils, and to give effect to the settlor's or testator's intention, that the present Bill is proposed. The sole object of the Bill is to enable the Court to carry out settlor's or testator's intention. which, under the present state of the law, they are precluded from it. At the same time. it is recognised that this can only be done within the limits allowed by the rule against perpetuity, and these limits are prescribed, in clauses 4 and 5. The effect of this Bill. if passed into law, will be to enable Hindus and Muhammadans to make dispositions of their property to the same extent, and subject to the same limitations as other communities in British India." Gazette of India, 1916, Part V. page 2. SELECT COMMITTEE REPORT [* * * * *] "Inobedience to the instructions contained in the order of reference, we have so amended the Bill as to confine its operation to Hindus save that in the exercise of the discretion vested in us, we have inserted an enabling clause permitting the Governor-General in Council to extend its provisions to the Khoja community in the whole or any part of India where he is satisfied that the community in question desires the extension. Having regard to the existence of Hindu Transfers and Bequest Act. 1914 (Madras Act I of 1914), we have limited the extent clause of the Bill so as to exclude the Province of Madras from its operation, but we have inserted a power allowing the Governor-General in Council to extend the Act to that Province should this course at any time be considered necessary or desirable. The most important clause in the Bill was clause 3 and this clause (now clause 2) we have recast so as to provide that no disposition of property by a Hindu, whether by a transfer inter vivos or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such disposition. We consider that the clause as drawn in this form avoids many of the difficulties which would arise if we had retained the positive form in which it appeared in the Bill as referred to us. Clauses 4 and 5 of the Bill. as referred to us endeavour to combine the provisions of the relevant sections of Succession Act, 1865, and Transfer of Property Act, 1882. The language of the two Acts differs in slight respects and we think it in every way desirable not to attempt to combine their provisions in a composite clause, and we have preferred in section 3 of the Bill, as

revised by us. to incorporate the sections of the Acts in question by reference. We are well aware that referential legislation of this kind is open to objection, but in the circumstances, we feel that the practical advantage of reference to a well known Code, and the incorporation of all the decisions under these provisions outweigh any such objection. In this connection, we have thought it well to include the provisions of S.20 of the Transfer of Property Act, 1882, as the wording of the Transfer of Property, differing in that respect from the Indian Succession Act. does not without this section, make it clear that the property is vested. The only other change of substance is the omission of clause 6 of the Bill as referred to us. A perusal of the opinions recorded on the Bill leads us to the conclusion that there is no clear manifestation of opinion in favour of the retention of the English rule laid down by the clause of question, and we think, in the absence of any consensus of opinion in favour of the rule that the clause should be omitted. The remaining alterations are mere alterations of form consequent upon the manner in which the Bill has been recast....." Gazette of India, 1916, Part V. page 76.

1. Short title and extent :-

(1) This Act may be called the Hindu Disposition of Property Act, 1916.

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

1. Substituted for sub-section (2) by the Miscellaneous Personal Laws (Extension) Act. 1959 (48 of 1959). S. 3 (1-2;1960).

2. Dispositions for the benefit of persons not in existence :-

Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu, whether by transfer inter vivos or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such disposition.

3. Limitations and conditions :-

The limitations and provisions referred to in section 2 shall be the following, namely:-

(a) in respect of dispositions by transfer inter vivos, those contained in [Transfer of Property Act, 1882 , and

(b) in respect of dispositions by will, those contained in [sections

113. Section 114 of the Indian Succession Act, 1925 , Section 115 of the Indian Succession Act, 1925 and Section 116 of the Indian Succession Act, 1925].

4. Failure of prior disposition :-

Repealed by the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929), section 12.]

5. Application of this Act to the Khoja community :-

Where the ¹[State Government] is of opinion that the Khoja community in ²[the State] or any part thereof desire that the provisions of this Act should be extended to such community ³[it] may, by notification in the ⁴ [Official Gazette], declare that the provisions of this Act. with the substitution of the word "Khojas" or "Khoja", as the case may be, for the word "Hindus" or "Hindu" wherever those words occur, shall apply to that community in such area as may be specified in the notification. and this Act shall thereupon have effect accordingly.

1. Substituted for "Provincial Government" by A.L.O., 1950
2. Substituted for "the province" by A.L.O., 1950.
3. Substituted for "he" by A.o., 1937.
4. Substituted for "Gazette of india," by A.L.O., 1937.