

Married Women's Property Act, 1874

3 of 1874

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"The Indian Succession Act (X of 1865) section four, declares that no person shall by marriage acquire any interest in the property of the person whom he or she marries. This section, however, does

not apply to marriages contracted before the 1st January, 1866, and, in the case of persons married after that day, the Act does not protect the husband from liability from the debts of his wife contracted before marriage, nor does it expressly provide for the enforcement of claims by or against such wives. The objects of the present Bill are, first, to extend the protection afforded to wives by section four of the Succession Act (so far as regards future wages and earnings and policies of insurance) to women married before 1st January 1866; secondly to declare that a married woman may sue in her own name for any property which by force of the Succession Act, or the proposed Act, is her separate property; thirdly, to relieve the husband of a wife married after the 31st December 1865, from her ante-nuptial debts; and, lastly, to declare that any person entering into a contract with a wife (otherwise than as her husband's agent), shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered had she been unmarried. Clause 4 (as to a wife's wages and earnings) is equivalent to the Married Women's Property Act (33 and 34 Vic., Chap. 93) section one. Clause 6 is copied from the first paragraph of section ten of that Act. It declares that any married woman may effect a policy of insurance on her own life or on her husband's life, on her own behalf, and that the amount assured shall be her separate property. As the law stands, if a wife effects such a policy (otherwise than out of her separate estate), and dies in her husband's lifetime, the husband, in the capacity of her administrator, becomes the absolute owner of the policy. Clause 6 is equivalent to the second paragraph of the same section, the Official Trustee under Act 17 of 1864 replacing the trustee appointed in England by the Court of Chancery or the County Court. It provides that an insurance effected by a husband on his own life and expressed to be for his wife's benefit shall be deemed to be a trust for her benefit, and shall not be subject to the claims of his creditors, except, of course, when the transaction was intended to defraud them. This provision is necessitated by the doctrine that a husband as such has no insurable interest in his wife's life. It is true that, as the law stands, such a policy might be effected; but it would only be in the nature of a voluntary settlement, and it would be liable to the dangers to which such settlements are exposed. Clauses 7 (as to legal proceedings by married women) and 8 (as to the non-liability of a husband for his wife's ante-nuptial debts) are respectively equivalent to sections

eleven and twelve of the Married Women's Property Act. Clause 9 declares that the law as to a wife's liability for her post-nuptial debts is in conformity with a recent decision of Mr. Justice Phear (Archer v. Watkins, 8 Begn, L.R. 372). This decision is binding only in Bengal: the Bill will extend its authority throughout British India. The Bill does not apply to married women who are Hindus, Muhammadans, Buddhists, Sikhs or Jains, and power is taken to exempt from its operation, either retrospectively or prospectively, the members of any race, sect or tribe to whom it is inexpedient to apply its provisions," -Gazette of India, 1873, Part V, p. 457.

CHAPTER 1

PRELIMINARY

1. Short title :-

This Act may be called the Married Women's Property Act, 1874.

2. Extent and application :-

¹[It extends to the whole of India except the State of Jammu and Kashmir.] But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions. And the ¹[State Government] may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom it may consider it impossible or inexpedient to apply such provisions. The ³[State Government] may also revoke any such order, but not so that the revocation shall have any retrospective effect. All orders and revocations under this section shall be published in the ⁴[Official Gazette]. ⁵ [* * * * * * * * * * * * * * * * * *]

1. Section 6 was re-numbered as sub-section (1) of that section by Married Women's Property (Amendment) Act, 1923 (XIII of 1923), S. 2.

3. Substituted for the words "Part A State or Part C State" by 2 A.L.O., 1956.

4. See now Official Trustees Act, 1913 (II of 1913).

5. Substituted for former sub-section (2), by Married Women's Property (Extension) Act, 1959 (LXI of 1959), S. 3 (1-3-1960).

3. Commencement :-

Repealed by Repealing Act, 1876, S. I and Sch.]

CHAPTER 2

MARRIED WOMENS WAGES AND EARNINGS

4. Married womens earnings to be their separate property :-

The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in on or trade carried on by her and not by her husband. and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill. and all savings from and investments of such wages, earnings and property, shall be deemed to be her separate properety, and her receipts alone shall be good discharges for such wages, earnings and property.

CHAPTER 3

INSURANCES BY WIVES AND HUSBANDS

5. Married women may effect policy of insurance :-

Any married woman may effect a policy of insurance on her own behalf and independently of her husband: and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

6. Insurance by husband for benefit of wife :-

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[(1)A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate. When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the ²[State] in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing. And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864 ³(to constitute an Office of Official Trustee), section 10 . Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent

to defraud creditors.

4 [(2) Notwithstanding anything contained in section 2 , the provisions of sub-section (1) shall apply in the case of any policy of insurance such as is referred to therein which is effected-

(a) by any Hindu, Muhammadan, Sikh or Jain-

(i) in Madras, after the thirty-first day of December, 1913, or

(ii) in any other territory to which this Act extended immediately before the commencement of the Married Women's Property (Extension) Act, 1959, after the first day of April, 1923, or

(iii) in any territory to which this Act extends on and from the commencement of the Married Women's Property (Extension) Act, 1959, on or after such commencement;

(b) by a Buddhist in any territory to which this Act extends, on or after the commencement of the Married Women's Property (Extension) Act, 1959. Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent court passed-

(i) before the first day of April, 1923, in any case to which sub-clause (i) or sub-clause (ii) of clause (a) applies; or

(ii) before the commencement of the Married Women's Property (Extension) Act, 1959, in any case to which sub-clause (iii) of clause (a) or clause (b) applies.]

1. Section 6 was re-numbered as sub-section (1) of that section by Married Women's Property (Amendment) Act, 1923 (XIII of 1923), S. 2.

2. Substituted for the words "Part A State or Part C State" by 2 A.L.O., 1956.

3. See now Official Trustees Act, 1913 (II of 1913).

4. Substituted for former sub-section (2), by Married Women's Property (Extension) Act, 1959 (LXI of 1959), S. 3 (1-3-1960).

CHAPTER 4

LEGAL PROCEEDINGS BY AND AGAINST MARRIED WOMEN

7. Married woman may take legal proceedings :-

A married woman may maintain suit in her own name for the recovery of property of any description which, by force of the said Succession Act, 1865, or of this Act, is her separate property, and she shall have, in her own name, the same remedies, both civil and

criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

8. Wives liability for postnuptial debts :-

If a married woman (whether married before or after the first day of January, 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent other separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree : ¹ [Provided that nothing herein contained shall-

(a) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein, or

(b) affect the liability of a husband for debts contracted by his wife's agency expressed or implied.]

1. Substituted for the original Proviso, by Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929). S. 2.

CHAPTER 5

HUSBANDS LIABILITY FOR WIFES DEBTS

9. Husband not liable for wives antenuptial debts :-

A husband married after the thirty-first day of December, 1865 shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried: Proviso Provided that nothing contained in this section shall ¹ [* * *] invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's antenuptial debts.

1. The words "affect any suit instituted before the passing of this Act. nor" were omitted by Amending Act. 1891 (12 of 1891), S. 2 and Sch. 1.

CHAPTER 6

HUSBANDS LIABILITY FOR WIFES BREACH OF TRUST OR DEVASTATION

10. Extent of husbands liability for wifes breach of trust or devastation :-

Where a woman is a trustee, executrix or administratrix, either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or administration, be liable for any breach of trust committed by her, or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of the deceased.]