

Muslim Personal Law (Shariat) Application Act, 1937

An Act to make provision for the application of the Muslim Personal Law (Shariat) to Muslims [Fn. 1]

WHEREAS it is expedient to make provision for the application of the Muslim Personal Law (Shariat) to Muslims [Fn. 2] ;

It is hereby enacted as follows:- FOOTNOTES : 1. The words in the Provinces of India omitted by the O.1950.2. The words " in the Provinces of India " omitted by the A. O. 1950.

Statement of Object

For several years past it has been the cherished desire of the Muslims of British India that Customary Law should in no case take the place of Muslim Personal Law. The matter has been repeatedly agitated in the press as well as on the platform. The Jamiat-ul-Ulema-i-Hind, the greatest Moslem religious body has supported the demand and invited the attention of all concerned to the urgent necessity of introducing a measure to this effect. Customary Law is a misnomer in as much as it has not any sound basis to stand upon and is very much liable to frequent changes and cannot be expected to attain at any time in the future that certainty and definiteness which must be the characteristic of all laws. The status of Muslim women under the so-called Customary Law is simply disgraceful. All the Muslim Women Organisations have therefore condemned the Customary Law as it adversely affects their rights. They demand that the Muslim Personal Law (Shariat) should be made applicable to them.

2. The introduction of Muslim Personal Law will automatically raise them to the position to which they are naturally entitled. In addition to this present measure, if enacted, would have very salutary effect on society because it would ensure certainty and definiteness in the mutual rights and obligations of the public. Muslim Personal Law (Shariat) exists in the form of a veritable code and is too well known to admit of any doubt or to entail any great labour in the shape of research. which is the chief feature of Customary Law.

1 . Short title and extent.-

(1) This Act may be called the Muslim Personal Law (Shariat) application Act, 1937.

(2) It extends to the whole of India except ^[1] the territories which, immediately before the 1st November, 1956, were comprised in Part B States ^[2] .

FOOTNOTES:

1. . Substituted by the Adaptation of Laws (No. 3) Order, 1956, for " Part B States".

2. The words " excluding the North-West Frontier Province " omitted by the A. O. 1948.

2 . Application of personal law to Muslims.- Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of

marriage, including talaq, ıla, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).

3 . Power to make a declaration.- (1) Any person who satisfies the prescribed authority-

(a) that he is a Muslim, and

(b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872, (9 of 1872) and

(c) that he is a resident of ^[1] the territories to which this Act extends,

may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of ^[2] the provisions of this section, and thereafter the provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein adoption, wills and legacies were also specified.

(2) Where the prescribed authority refuses to accept a declaration under sub-section (1), the person desiring to make the same may appeal to such officer as the State Government may, by general or special order, appoint in this behalf, and such officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

FOOTNOTES:

1. Subs by the *Adaptation of Laws (No. 3) Order, 1956*, for " a Part A State or a Part C

2. Substituted by *Act 16 of 1943, Section 2*, for "this Act"

4 . Rule-making power.- (1) The State Government may make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) for prescribing the authority before whom and the form in which declarations under this Act shall be made;

(b) for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied.

(3) Rules made under the provisions of this section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

5 . Dissolution of marriage by Court in certain circumstances.- Rep. by the Dissolution of Muslim Marriages Act, 1939 (8 of 1939), s. 6.

6 . Repeals.- ^[1] The undermentioned provisions of the Acts and Regulations mentioned below shall be repealed in so far as they are inconsistent with the provisions of this Act namely:-

(1) Section 26 of the Bombay Regulation IV of 1827.

(2) Section 16 of the Madras Civil Courts Act, 1873;(3 of 1873).

^[2]

This omission has the effect of reviving the operation of s. 37 of that Act.}

(4) Section 3 of the Oudh Laws Act, 1876, (18 of 1876).

(5) Section 5 of the Punjab Laws Act, 8 , (5 of 1872).

(6) Section 5 of the Central Provinces Laws Act, 1875; (20 of 1875) and

(7) Section 4 of the Ajmere Laws Regulation, 1877.(Reg. 3 of 1877).

FOOTNOTES:

1. *Substituted by Section 3, ibid., for "Provisions "*

2. *The words, figures and brackets " (3) section 37 of the Bengal, Agra and Assam Civil Courts Act, 1887" omitted by Section 3, ibid.*